[redacted]

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1

# Court of Appeals

OF THE STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,
*Plaintiffs-Respondents,*

*against*

2

MORRIS MALINSKY and SIDNEY RUDISH,
*Defendants-Appellants,*

and

JOSEPH INDOVINO,
*Defendant.*

## Statement Under Rule 234

3

This is an appeal from the judgments of conviction of the County Court of Kings County, dated the 19th day of July, 1943, rendered against the defendants, convicting them of the crime of Murder in the First Degree, and sentencing them to be put to death in the electric chair.

Trial was had before Hon. Samuel S. Leibowitz, a County Judge of Kings County, and a jury, commencing on the 14th day of June, 1943, and concluding on the 24th day of June, 1943.

*Statement Under Rule 234*

Hon. Thomas Cradock Hughes, Acting District Attorney of Kings County, by James A. McGough, Assistant District Attorney, appeared for the People.

The defendant Morris Malinsky was represented by Joseph Solovei, Esq., on the trial, and by an order of Mr. Justice Samuel S. Leibowitz, dated the 4th day of August, 1943, Joseph A. Solovei and David F. Price, Esqs., were assigned as attorneys and counsellors for defendant Malinsky, to perfect and prosecute his appeal.

The defendant Sidney Rudish was represented by Julian V. Carabba, Fred G. Morritt and Saul M. Meadow, Esqs., on the trial, and by an amended order of Mr. Justice Samuel S. Leibowitz, dated the 28th day of July, 1943, Julian V. Carabba, Saul M. Meadow and John J. Fitzgerald, Esqs., were assigned as attorneys and counsellors for defendant Rudish, to perfect and prosecute his appeal.

The defendant Joseph Indovino is not a party to this appeal.

There has been no further change of parties or attorneys.

## Notice of Appeal of Defendant, Morris Malinsky

COUNTY COURT

KINGS COUNTY

THE PEOPLE OF THE STATE OF NEW YORK,
*Plaintiffs,*

*against*

MORRIS MALINSKY, indicted as MORRIS MALINSKI,
*Defendant.*

SIRS:

PLEASE TAKE NOTICE, that the defendant Morris Malinsky, hereby appeals to the Court of Appeals of the State of New York, from a judgment of conviction rendered against him of the crime of Murder in the First Degree, at a Term of the County Court, Kings County, on the 19th day of July, 1943, and from the whole of said judgment and from each and every part thereof.

PLEASE TAKE FURTHER NOTICE, that the defendant, Morris Malinsky, further appeals from an order of the County Court, Kings County made and entered on the 23rd day of July, 1943 denying a motion to amend the record of the trial herein made by the defendant, Morris Malinsky, and further appeals from each and every decision of the Trial Court upon matters of law by which the substantial rights of the said defendant

10 *Notice of Appeal of Defendant, Morris Malinsky*

were prejudiced, and from the Trial Court's denials of the motions to set aside the verdict and the exceptions taken therein.

Dated: Brooklyn, New York August 6th, 1943

Yours, etc.,

JOSEPH SOLOVEI
215 Montague Street
11 Brooklyn, New York

DAVID F. PRICE
66 Court Street
Brooklyn, New York

Attorneys for Defendant

To:

THOMAS CRADOCK HUGHES, Esq.
Acting District Attorney
Municipal Building
Brooklyn, New York

12

FRANCIS J. SINNOTT
County Clerk, Kings County

WARDENS OF SING SING PRISON
Ossining, New York

## Notice of Appeal of Defendant, Sidney Rudish

COUNTY COURT

KINGS COUNTY

Indictment #27141

PEOPLE OF THE STATE OF NEW YORK,
*Plaintiffs,*

*against*

MORRIS MALINSKI, SIDNEY RUDISH,
JOSEPH INDOVINO,
*Defendants.*

SIRS:

PLEASE TAKE NOTICE that Sidney Rudish, one of the above named defendants, hereby appeals to the Court of Appeals of the State of New York from the judgment of conviction of the crime of murder in the first degree rendered against him in this Court, and the sentence imposed thereunder on the 19th day of July, 1943.

16 *Notice of Appeal of Defendant, Sidney Rudish*

Dated, August 4th, 1943.

Yours, etc.,

JOHN J. FITZGERALD
32 Court Street
Brooklyn, N. Y.

JULIAN V. CARABBA
National City Bank Bldg.
17 5420—13th Ave.
Brooklyn, N. Y.

SAMUEL M. MEADOW
1450 Broadway
Manhattan, New York City
Attorneys for Defendant
Sidney Rudish

To:

Hon. THOMAS CRADOCK HUGHES
Acting District Attorney
18 Kings County, N. Y.
Municipal Building
Brooklyn, N. Y.

CLERK OF THE COUNTY COURT OF KINGS COUNTY
120 Schermerhorn Street
Brooklyn, N. Y.

## Amended Notice of Appeal of Defendant, Sidney Rudish

19

COUNTY COURT

KINGS COUNTY

Indictment #27141

PEOPLE OF THE STATE OF NEW YORK,
*Plaintiffs,*

20

*against*

MORRIS MALINSKI, SIDNEY RUDISH,
JOSEPH INDOVINO,
*Defendants.*

SIRS:

PLEASE TAKE NOTICE that Sidney Rudish, one of the above named defendants, hereby appeals to the Court of Appeals of the State of New York from the judgment of conviction of the crime of Murder in the First Degree rendered against him in this Court, and the sentence imposed thereunder on the 19th day of July, 1943, and from the whole of said judgment and from each and every part thereof.

21

PLEASE TAKE FURTHER NOTICE that the said defendant hereby appeals from and seeks to have reviewed upon this appeal the following orders heretofore made herein:

22 *Amended Notice of Appeal of Defendant, Sidney Rudish*

I. An order made and entered herein on July 23rd, 1943.

(a) Denying the defendant's motion for arrest of judgment.

(b) Denying the defendant's motion for an inspection of the Grand Jury's minutes.

(c) Denying the defendant's motion to dis-
23 miss the indictment herein.

(d) Denying the defendant's motion to set aside the verdict of "Guilty of Murder in the First Degree".

II. An order made and entered herein on the 11th day of August, 1943 denying the said defendant's motion to include the Grand Jury's minutes as a part of the trial record on appeal herein.

Dated, August 14th, 1943.

24 Yours, etc.,

JOHN J. FITZGERALD
32 Court Street
Brooklyn, N. Y.

JULIAN V. CARABBA
National City Bank Bldg.
5420—13th Ave.
Brooklyn, N. Y.

SAMUEL M. MEADOW
1450 Broadway
Manhattan, New York City
Attorneys for Defendant
Sidney Rudish

*Amended Notice of Appeal of Defendant, Sidney Rudish*

To:

Hon. Thomas Cradock Hughes
Acting District Attorney
Kings County, N. Y.
Municipal Building
Brooklyn, N. Y.

Clerk of the County Court of Kings County
120 Schermerhorn Street
Brooklyn, N. Y.

28

## Minutes of Presentment

At a term of the County Court, held in and for the County of Kings, at 120 Schermerhorn Street, in the Borough of Brooklyn, City of New York, on the 10th day of November 1942.

Present: Hon. Peter J. Brancato,
County Judge.

29

The People of the State of New York

*against*

Morris Malinski
Sidney Rudish
Joseph Indovino

#27141

30

Proclamation made and Court opened.

The Grand Jury comes into Court and presents indictments against the following named defendants for the crimes set opposite their names respectively.

No. 27141 Morris Malinski, Sidney Rudish, Joseph Indovino. Jointly indicted for Murder-1st Degree.

A true extract from the minutes.

Francis J. Sinnott
Clerk

## Indictment

COUNTY COURT

OF THE COUNTY OF KINGS

THE PEOPLE OF THE STATE OF NEW YORK
*Plaintiffs*

*against*

MORRIS MALINSKI
SIDNEY RUDISH
JOSEPH INDOVINO
*Defendants*

The Grand Jury of the County of Kings, by this indictment, accuse the defendants of the crime of Murder In The First Degree, committed as follows:

The defendants, on or about February 15, 1941, in the County of Kings, acting in concert with Abraham Beitler, deceased, wilfully, feloniously and of malice aforethought shot and killed Leon Fox, with a pistol.

THOMAS CRADOCK HUGHES
Acting District Attorney

## Endorsements on Indictment

No. 27141 119/108a

THE PEOPLE

*vs.*

MORRIS MALINSKY
SIDNEY RUDISH
JOSEPH INDOVINO

MURDER FIRST DEGREE

INDICTMENT

A TRUE BILL.

RICHARD J. CANTILLION
Foreman

THOMAS CRADOCK HUGHES
Acting District Attorney

Filed Nov. 10, 1942

All three Plead Not Guilty
Judge Brancato
A.D.A. Hughes
All three Bail denied—Matter of discretion See Sec. 553 C.C.P.
Tried June 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 1943
Judge Leibowitz
A.D.A. McGough
Part 2
Verdict Malinsky Guilty as charged No Rec. for Life Imp.
Rudish Guilty as charged No Rec. for Life Imp.

*Endorsements on Indictment* 37

Indovino, Guilty as charged with Rec. for Life Imp.
July polled on all 3.
All Rem.

June 24, 1943

Leibowitz, J.

Three

Defendants personally appear and advised by the Court of their rights pursuant to Section 308 C.C.P. 38
Have you a lawyer? Yes. Have you money to retain a lawyer? Yes. Do you wish the Court to assign a lawyer? No.
Name of Lawyer:
Jos. Solovei for Malinski
Saul M. Meadow for Rudish 1450 B'way N. Y.
V. Impellitteri 233 Bway for Indovino

Morris Malinsky
Counsel Assigned Retained 39
Sex M. W.
Age 24
Nativity Brooklyn
Residence 714 Hinsdale St.
Occupation Helper on truck
Mechanical Trade none
Married yes
Read yes
Degree of Education P.S. 8b
Religion Hebrew
Degree of Religious Instruction Irreg.
Parents Father living

40 *Endorsements on Indictment*

Temperate yes
Drugs no
Previous Conviction 1 Fel.
Sentence Malinski—to be executed in the manner and place prescribed by law during the week of Aug. 29, 1943. Remanded.
Leibowitz, J.
July 19, 1943 part 2
Deft. Rudish refuses to be sworn or to answer any questions.

41 Sentence (Rudish) to be executed in the manner and place prescribed by law during the week of Aug. 29th, 1943. Remanded. Leibowitz, J.
Joseph Indovino assigned
Counsel Assigned M. W.
Sex M. W.
Age 27
Nativity Brooklyn
Residence 2118 Ocean Pkway
Occupation Asbestos Sprayer
Mechanical Trade presser

42 Married yes
Read yes
Degree of Education P.S. 8b
Religion Catholic
Degree of Religious Instruction Regular
Parents Mother living
Temperate yes
Drugs no
Previous Conviction 1 Fel. no misd.
Sentence (Indovino)

43

## Minutes of Arraignment

At a term of the County Court, held in and for the County of Kings, at 120 Schermerhorn Street, in the Borough of Brooklyn, City of New York, on the 10th day of November, 1942.

Present: Hon. PETER J. BRANCATO,
County Judge.

44

THE PEOPLE OF THE STATE OF NEW YORK

*against*

MORRIS MALINSKI
SIDNEY RUDISH
JOSEPH INDOVINO

#27141

45

Proclamation made and Court opened.

The following named defendants personally appeared and were advised as to their rights pursuant to Section 308 C.C.P.; and were then arraigned to plead to indictment found against them respectively:—

No. 27141 Morris Malinski Sidney Rudish Joseph Indovino Jointly indicted for Murder—1st Degree.

46 *Minutes of Arraignment*

All three plead—Not guilty Bail denied on all three defts.

All three defts. remanded.

Joseph Solovei, Esq., Atty. for Malinski
Saul M. Meadows, Esq., Atty. for Rudish
V. Impelletteri, Esq., Atty. for Indovino

A true extract from the minutes.

FRANCIS J. SINNOTT
Clerk

47

48

49

## Minutes of Trial

At a term of the County Court, held in and for the County of Kings, at 120 Schermerhorn Street, in the Borough of Brooklyn, City of New York, on the 14th day of June, 1943.

Present: SAMUEL S. LEIBOWITZ,
County Judge.

50

THE PEOPLE OF THE STATE OF NEW YORK

*against*

MORRIS MALINSKI
SIDNEY RUDISH
JOSEPH INDOVINO

Indictment No. 27,141.

51

Jointly indicted for the crime of Murder in the first degree.

Appearances:

James McGough, Esq., Asst. District Attorney.
Joseph A. Solovei, Esq., Atty. for defendant, Malinski.
Messrs. Fred C. Morritt, Saul M. Meadow and Julian V. Carabba, Attorneys for the defendant, Rudish.

52 *Minutes of Trial*

Messrs. Michael Longo, Abraham Multer and William F. X. Geoghan, Attorneys for the defendant, Indovino.

Ralph E. Roberts and Louis Lehman, Official Stenographers.

All three defendants present in Court.

The district attorney moves this indictment for trial, the Court so orders, and the following named special trial jurors were duly drawn, empanelled, examined, accepted and sworn to try
53 the same, the defendants having been informed of their rights pursuant to Section 369 of the Code of Criminal Procedure:

1. Louis S. Yearsley.

Recess for lunch. Juror admonished. Dinner Order signed.

Defendants remanded.

Trial continued after recess.

54 All previous appearances noted.

Defendants present in Court.

The juror heretofore duly sworn returns into Court and answers to the call of his name.

Examination of jurors continued.

The following named special trial jurors were duly drawn, empanelled, examined, accepted and sworn, in addition to the one heretofore duly sworn:

2. Franklin Brower
3. Timothy J. Buckley, Jr.,
4. Harold W. Burns

5. Eugene F. Corwin
6. Isidore M. Horowitz

Recess for supper. Jurors admonished. Supper order signed.

Defendants remanded.

Trial continued after recess.

All previous appearances noted.

Defendants present in Court.

The six jurors heretofore duly sworn return into Court and answer to the call of their names.

Examination of jurors continued.

The following named special trial jurors were duly drawn, empanelled, examined, accepted and sworn, in addition to the six jurors heretofore duly sworn:

7. Charles A. Beier
8. Richard V. Schnibbe
9. Lester Randall
10. Joseph A. Machles
11. Rudolph A. Weiss
12. Karl J. H. Uckert.

The jurors heretofore duly sworn individually were sworn collectively to try this issue.

Pursuant to Section 358A of the Code of Criminal Procedure the following named alternate special trial jurors were duly drawn, empanelled, examined, accepted and sworn to try this issue:

13. Charles J. Knudsen
14. Guy S. Lester.

58 *Minutes of Trial*

Trial continued to Tuesday, June 15, 1943, at 10.30 A.M.

Jurors admonished. Defendants remanded.

Ordered by the Court, that the fourteen members of the jury and the five officers in attendance thereon, be furnished with refreshments and lodging at the Half Moon Hotel, Brooklyn, N.Y. And that the same be a county charge.

59

A true extract of the minutes.

FRANCIS J. SINNOTT
Clerk

60

*Minutes of Trial* 61

At a term of the County Court, held in and for the County of Kings, at 120 Schermerhorn Street, in the Borough of Brooklyn, City of New York, on the 15th day of June, 1943.

Present: Hon. SAMUEL S. LEIBOWITZ,
County Judge.

62

THE PEOPLE OF THE STATE OF NEW YORK,

*against*

MORRIS MALINSKI
SIDNEY RUDISH
JOSEPH INDOVINO

Indictment No. 27,141.

63

Trial continued from June 14, 1943.

All previous appearances noted.
Defendants present in Court.
The jury return into court and all answer to the call of their names.
Mr. McGough opens for the people.
Mr. Solovei opens for Malinski.
Mr. Carabba opens for Rudish.
Mr. Geoghan moves to dismiss indictment as

64 *Minutes of Trial*

against Indovino on the opening for the people. Motion denied.

Mr. Geoghan opens for Indovino.

People's Witnesses:

Henry Fox, 2343 Valentine Ave., Bronx. Sworn.

Dr. M. Edward Marten, 152 Lenox Road, Brooklyn. Sworn.

Anthony O. DeSario, 1860—52 St., Brooklyn.
65 Sworn.

Herman M. Dolinsky, 845 Prospect Place, Brooklyn. Sworn.

Max Kallman, 1565 E. 18 St., Brooklyn. Sworn.

James Rabbitt, Patrolman #12554—60 Prec. Sworn.

George A. Bremeier, Act. Lt. #955. Sworn.

Recess for lunch. Jury admonished. Defendants remanded.

Dinner order signed.

Trial continued after recess.
66

All previous appearances noted.

Defendants present in Court.

The jurors heretofore duly sworn return into court and answer to the call of their names.

People's witnesses:

George L. Corboy, Patrolman #10543—68 Prec. Sworn.

Edward Basch, Detective #1245—66 Squad. Sworn.

Benjamin Glodowsky, 3066 B. 13 St., Brooklyn. Sworn.

Julius Gimbel, 2358—84th St., Brooklyn. Sworn.

August A. Hollingsworth, 43 Chestnut St., Brooklyn. Sworn.

John Trusch, Detective #860, Ballistics Bureau. Sworn.

Trial continued to June 16, 1943, at 10:30 A. M. Jury admonished. Defendants remanded. Order signed for refreshments and lodgings at the Half Moon Hotel. Supper order signed. 68

A true extract of the minutes.

FRANCIS J. SINNOTT
Clerk.

69

70 *Minutes of Trial*

At a term of the County Court, held in and for the County of Kings, at 120 Schermerhorn Street, in the Borough of Brooklyn, City of New York, on the 16th day of June, 1943.

Present: Hon. SAMUEL S. LEIBOWITZ,
County Judge.

71

THE PEOPLE OF THE STATE OF NEW YORK

*against*

MORRIS MALINSKI
SIDNEY RUDISH
JOSEPH INDOVINO

Indictment No. 27,141.

72

Trial continued from June 15, 1943.

All previous appearances noted.
Defendants present in Court.
The jurors heretofore duly sworn return into court and answer to the call of their names.

People's witnesses:

David Yellin, Sing Sing State Prison. Sworn.
Question of law between court and counsel discussed in the absence of the jury and the witness.
Jury return. Trial resumed.

*Minutes of Trial* 73

People's witnesses:

David Yellin, examination continued. Recalled.

Recess for lunch. Jury admonished. Defendants remanded.

Dinner order signed.
Trial continued after recess.
All previous appearances noted.
Defendants present in Court.
The jurors heretofore duly sworn return into court and answer to the call of their names. 74

People's witnesses:

Louis Sonenblick, 722 Van Siclen Ave., Brooklyn. Sworn.
Nathan Spielfogel, Sing Sing State Prison. Sworn.

Short recess. Jury admonished. Jury return. Trial resumed. 75

Nathan Spielfogel, examination continued. Recalled.
Trial continued to June 17, 1943 at 10 A. M.
Jury admonished. Defendants remanded.
Supper order signed. Order signed for lodgings and refreshments at the Half Moon Hotel, Brooklyn, N. Y.

A true extract of the minutes.

FRANCIS J. SINNOTT
Clerk.

*Minutes of Trial*

At a term of the County Court, held in and for the County of Kings, at 120 Schermerhorn Street, in the Borough of Brooklyn, City of New York, on the 17th day of June, 1943.

Present: Hon. SAMUEL S. LEIBOWITZ,
County Judge.

---

THE PEOPLE OF THE STATE OF NEW YORK

*against*

MORRIS MALINSKI
SIDNEY RUDISH
JOSEPH INDOVINO

Indictment No. 27,141.

---

Trial continued from June 16, 1943.

All previous appearances noted.
Defendants present in court.
The jurors heretofore duly sworn return into court and answer to the call of their names.

People's witnesses:

Nathan Spielfogel, cross-examination continued.

*Minutes of Trial* 79

Short recess. Jury admonished. Jury return. Trial resumed.

Nathan Spielfogel, cross-examination continued.

Simon Eisler, 1846 Pitkin Ave., Brooklyn. Sworn.

Recess for lunch. Jury admonished. Defendants remanded.

80

Dinner order signed.

Trial continued after recess.

All previous appearances noted.

Defendants present in Court.

The jurors heretofore duly sworn return into court and answer to the call of their names.

People's witnesses:

Peter Shamin, 49 Ave. B, N. Y. City. Sworn.

Virginia Goonan, 1327 Amsterdam Ave., N. Y. City. Sworn.

81

Short recess. Jury admonished. Jury return. Trial resumed.

People's witnesses:

Virginia Goonan, examination continued.

Peter DiPisa, 314 E. 31st St., N. Y. City. Sworn.

Frank Maguire, 633 11th St., Brooklyn. Sworn.

82 *Minutes of Trial*

Short recess. Jury admonished. Jury return. Trial resumed.

Frank Maguire, examination continued.

Defendant's witness:

Morris Malinsky, indicted as Morris Malinski, 714 Hinsdale St., Brooklyn. Sworn in his own behalf, for the sole purpose of impeaching alleged confession.

83 Trial continued to June 18, 1943, at 10 A.M.

Jury admonished. Defendants remanded. Supper order signed. Order signed for lodgings and refreshments at the Half Moon Hotel.

A true extract of the minutes.

FRANCIS J. SINNOTT
Clerk.

84

*Minutes of Trial* 85

At a term of the County Court, held in and for the County of Kings, at 120 Schermerhorn Street, in the Borough of Brooklyn, City of New York, on the 18th day of June, 1943.

Present: Hon. SAMUEL S. LEIBOWITZ,
County Judge.

86

THE PEOPLE OF THE STATE OF NEW YORK

*against*

MORRIS MALINSKI
SIDNEY RUDISH
JOSEPH INDOVINO

Indictment No. 27,141.

87

Trial continued from June 17, 1943.

All previous appearances noted.
Defendants present in court.
The jurors heretofore duly sworn return into court and answer to the call of their names.

People's witnesses:

James McNally, Lt. #262—62 Squad. Sworn.

88 *Minutes of Trial*

James Bell, Jr., Detective #1136—64 Squad. Sworn.

John McNally, Detective #219—66 Squad. Sworn.

Short recess. Jury admonished. Jury return. Trial resumed.

People's witnesses:

George Lowe, Detective #200—60 Squad.
89 Sworn.

Frank Maguire. Recalled.

Recess for lunch. Jury admonished. Defendants remanded.

Dinner order signed.

Trial continued after recess.

All previous appearances noted.

Defendants present in Court.

The jurors heretofore duly sworn return into
90 court and answer to the call of their names.

People's witnesses:

Charles P. Celano, Detective #361, Homicide Squad. Sworn.

Lt. James McNally. Recalled.

Samuel Kovner, Attica State Prison. Sworn.

Short recess. Jury admonished. Jury return. Trial resumed.

*Minutes of Trial* 91

Samuel Kovner, examination continued.

People rest.

Mr. Solovei moves to dismiss indictment as to Malinski. Denied.

Mr. Geoghan moves to dismiss indictment as to Indovino. Denied.

Mr. Carabba moves to dismiss indictment as to Rudish. Denied.

Trial continued to June 19, 1943 at 9.30 A.M. 92

Jury admonished. Supper order signed. Order for lodgings and refreshments at Half Moon Hotel signed. Defendants remanded.

A true extract of the minutes.

FRANCIS J. SINNOTT
Clerk.

93

94 *Minutes of Trial*

At a term of the County Court, held in and for the County of Kings, at 120 Schermerhorn Street, in the Borough of Brooklyn, City of New York, on the 19th day of June, 1943.

Present: Hon. SAMUEL S. LEIBOWITZ,
County Judge.

95

THE PEOPLE OF THE STATE OF NEW YORK

*against*

MORRIS MALINSKI
SIDNEY RUDISH
JOSEPH INDOVINO

Indictment No. 27,141.

96

Trial continued from June 18, 1943.

All previous appearances noted.

Defendants present in Court.

The jurors and alternates heretofore duly sworn appear and answer to the call of their names.

The jury is excused and admonished during counsels' additional motions and arguments thereon. See stenographer's minutes for rulings.

*Minutes of Trial* 97

Jury return and trial resumed.

Mr. McGough moves to re-open people's case. Granted.

People's witness:

Esther Levine, 341 Chester Street, Brooklyn. Sworn.

People rest.

Defendants motions renewed. Same rulings. 98

Defendant's witnesses:

Joseph Brigandi, 1935 West 7th Street, Brooklyn. Sworn.

Celia Indovino, 2118 Ocean Parkway, Brooklyn. Sworn.

Fannie Brigandi, 1935 West 7th Street, Brooklyn. Sworn.

Rose Scuro, 2118 Ocean Parkway, Brooklyn, Sworn and testified through Jos. L. Fair, Italian Interpreter. 99

Joseph Indovino, defendant, 2118 Ocean Parkway, Brooklyn. Sworn.

Recess until June 21, 1943, at 10 A.M. Jury admonished. Defendants remanded. Luncheon and supper order signed. Order for lodgings and refreshments at Half Moon Hotel signed.

A true extract of the minutes.

FRANCIS J. SINNOTT
Clerk.

100 *Minutes of Trial*

At a term of the County Court, held in and for the County of Kings, at 120 Schermerhorn Street, in the Borough of Brooklyn, City of New Yrok, on the 21st day of June, 1943.

Present: Hon. SAMUEL S. LEIBOWITZ,
County Judge.

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101

THE PEOPLE OF THE STATE OF NEW YORK

*against*

MORRIS MALINSKI
SIDNEY RUDISH
JOSEPH INDOVINO

Indictment No. 27,141.

---

102

Trial continued from June 19, 1943.

All previous appearances noted.
Defendants present in court.
The jurors heretofore duly sworn return into court and answer to the call of their names.

Defendant's witnesses:

Joseph Indovino, direct examination continued.

*Minutes of Trial* 103

Defendant, Indovino, rests.

Mr. McGough moves to re-open people's case. Granted.

People's witnesses:

Solomon C. Schoenberg, 956—50th Street, Brooklyn. Sworn.

People rest. 104

Defendant's motions renewed. Same rulings.

Defendant, Indovino, rests.

Defendant's witnesses:

Rubin Jalkover, 985 Intervale Avenue, Bronx. Sworn.

Sidney Jacob Rudish, defendant, 402 E. 4th Street, N.Y.C. Sworn.

Recess for lunch. Jury admonished. Defendants remanded. 105

Dinner order signed.

Trial continued after recess.

All previous appearances noted.

Defendants present in court.

Jury return into court and all answer to the call of their names.

Defendant's witnesses:

Sidney Jacob Rudish, cross-examination continued.

106 *Minutes of Trial*

Joseph Rudish, 200 E. 6th St., N. Y. City. Sworn.

Defendant, Rudish, rests.

Defendant's witnesses:

Solomon C. Schoenberg, 956—50 St., Brooklyn, Sworn in behalf of the defendant, Malinski.

Morris Malinsky, indicted as Morris Malinski, defendant, 714 Hinsdale Street, Brooklyn.
107 Sworn.

Short recess. Jury admonished. Jury return. Trial resumed.

Morris Malinsky, direct examination continued.

Rubin Jalkover, recalled for further cross-examination.

Trial continued to June 22, 1943, at 10 A. M.

Jury admonished. Defendants remanded. Supper order signed.

Order for lodgings and refreshments at the
108 Half Moon Hotel signed.

A true extract of the minutes.

FRANCIS J. SINNOTT
Clerk.

*Minutes of Trial* 109

At a term of the County Court, held in and for the County of Kings, at 120 Schermerhorn Street, in the Borough of Brooklyn, City of New York, on the 22nd day of June, 1943.

Present: Hon. SAMUEL S. LEIBOWITZ,
County Judge.

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110

THE PEOPLE OF THE STATE OF NEW YORK

*against*

MORRIS MALINSKI
SIDNEY RUDISH
JOSEPH INDOVINO

Indictment No. 27,141.

---

111

Trial continued from June 21, 1943.

All previous appearances noted.
Defendants present in court.
The jurors heretofore duly sworn return into court and all answer to the call of their names.

Defendants witnesses:

Earl M. Bagnall, 4746—40 Street, Sunnyside, L. I. Sworn.
Defendant, Malinski, rests.

112 *Minutes of Trial*

People's witnesses in rebuttal:

Harold Guider, 385 Argyle Road, Brooklyn. Sworn.

Abraham Kaye, 101 Lincoln Road, Brooklyn. Sworn.

Harry Drobner, 85 Morton Street, Brooklyn. Sworn.

Edward Groehl, 301 East 7th Street, Manhattan. Sworn.

113 Peter Shamin. Recalled.

Short recess. Jury admonished. Arguments in the absence of the jury.

Jury return. Trial resumed.

Peter Shamin, examination continued.

Recess for lunch. Jury admonished. Defendants remanded.

Dinner order signed.

Trial continued after recess.

All previous appearances noted. Defendants present in court.

114 The jurors heretofore duly sworn return into court and answer to the call of their names.

People's witnesses in rebuttal:

Peter Shamin, cross-examination continued.

Nathan Spielfogel. Recalled.

People rest.

Defendant, Malinski, rests.

Short recess. Jury admonished. Discussions and rulings on questions of law during the absence of the jury. See Stenographer's minutes.

115

All defendants renew motions made at the end of the people's case.

All denied. See stenographer's minutes for decisions on all questions of law.

Jury return. Trial resumed.

Trial continued to June 23, 1943, at 10 A.M.

Jury admonished. Defendants remanded. Supper order signed.

Order signed for lodgings and refreshments at the Half Moon Hotel.

116

A true extract of the minutes.

FRANCIS J. SINNOTT
Clerk.

117

118 *Minutes of Trial*

At a term of the County Court, held in and for the County of Kings, at 120 Schermerhorn Street, in the Borough of Brooklyn, City of New York, on the 23rd day of June, 1943.

Present: Hon. SAMUEL S. LEIBOWITZ,
County Judge.

119

THE PEOPLE OF THE STATE OF NEW YORK

*against*

MORRIS MALINSKI
SIDNEY RUDISH
JOSEPH INDOVINO

Indictment No. 27,141.

120

Trial continued from June 22, 1943.

All previous appearances noted.

Defendants present in court.

The jurors heretofore duly sworn return into court and answer to the call of their names.

Mr. Geoghan sums up to the jury for defendant, Indovino.

Mr. Carabba sums up to the jury for defendant, Rudish.

121

Recess for lunch. Jury admonished. Defendants remanded.

Dinner order signed.

Trial continued after recess. All previous appearances noted. Defendants present in Court.

The jurors heretofore duly sworn return into court and answer to the call of their names.

Mr. Solovei sums up to the jury for the defendant Malinski.

Supper order signed. Order for lodgings and refreshments at the Half Moon Hotel signed. Trial continued to June 24, 1943 at 10 A. M. Jury admonished. Defendants remanded.

122

A true extract of the minutes.

FRANCIS J. SINNOTT
Clerk.

123

124 *Minutes of Trial*

At a term of the County Court, held in and for the County of Kings, at 120 Schermerhorn Street, in the Borough of Brooklyn, City of New York, on the 24th day of June, 1943.

Present: Hon. SAMUEL S. LEIBOWITZ,
County Judge.

125

THE PEOPLE OF THE STATE OF NEW YORK

*against*

MORRIS MALINSKI
SIDNEY RUDISH
JOSEPH INDOVINO

Indictment No. 27,141.

126

Trial continued from June 23, 1943.

All previous appearances noted.
Defendants present in Court.
The jurors heretofore duly sworn return into court and answer to the call of their names.
Mr. McGough sums up to the jury for the people.

Recess for lunch. Jury admonished. Defendants remanded.

Dinner order signed.

Trial continued after recess. All previous appearances noted.

Defendants present in court.

The jurors heretofore duly sworn return into court and answer to the call of their names.

The court charges the jury.

The alternate jurors, #13, Charles J. Knudsen, and #14, Guy S. Lester, are discharged in accordance with the provisions of Section 358a of the Code of Criminal Procedure.

128 The jury retire to deliberate in charge of Officers Lehritter and Litowitz, who were first duly sworn.

Defendants remanded. Supper order signed.

The jury return into court in the presence of defendant, Malinski, represented by Joseph A. Solovei, Esq., defendant Rudish, represented by Julian V. Carabba, Esq., Saul M. Meadow, Esq., Fred G. Morritt, Esq., defendant, Indovino, represented by Michael Longo, Esq., of counsel, all answer to the call of their names and say they find the defendant, Malinski, guilty as charged

129 without a recommendation for life imprisonment; the defendant, Rudish guilty as charged without a recommendation for life imprisonment; defendant, Indovino, guilty as charged with a recommendation for life imprisonment, and so say they all.

Mr. Solovei moves to poll the jury for defendant, Malinski.

Jury polled and each juror for himself says that his verdict is guilty as charged.

Mr. Carabba moves to poll the jury for defendant, Rudish.

130 *Minutes of Trial*

Jury polled and each juror for himself says that his verdict is guilty as charged.

Mr. Longo moves to poll the jury for defendant, Indovino.

Jury polled and each juror for himself says that his verdict is guilty as charged with a recommendation for life imprisonment.

All motions reserved. Defendants remanded, for sentence.

131 A true extract of the minutes.

FRANCIS J. SINNOTT
Clerk.

132

133

## Notice of Motion by Defendant Sidney Rudish for Orders in Arrest of Judgment, to Inspect Grand Jury Minutes, to Dismiss Indictment, and to Set Aside the Verdict

COUNTY COURT

KINGS COUNTY

Indictment No. 27,141.

134

PEOPLE OF THE STATE OF NEW YORK,

*against*

SIDNEY RUDISH, *et al.*,
*Defendants.*

SIR:—

PLEASE TAKE NOTICE that, upon the annexed 135
affidavit of Saul M. Meadow, sworn to July 16, 1943, and upon all the previous papers, pleadings and proceedings heretofore filed and had herein, and more particularly the indictment herein, the undersigned will move this court, at a Special Term thereof, Part II, before Hon. Samuel S. Leibowitz, to be held in and for the County of Kings, at the County Court House in the Borough of Brooklyn, City of New York, on July 19th, 1943, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can

136 *Notice of Motion by Defendant Sidney Rudish for Orders in Arrest of Judgment, to Inspect Grand Jury Minutes, to Dismiss Indictment, and to Set Aside the Verdict*

be heard, for an order in arrest of judgment, for an order to inspect the grand jury minutes, and for a further order to dismiss the indictment herein, and for such other and further relief as to this court may seem just and proper in the premises, and also for an order setting aside the verdict as being contrary to the weight of evidence.

137

Dated, New York, July 16, 1943.

Yours etc.,

SAUL M. MEADOW,
1450 Broadway,
New York, N. Y.

FRED G. MORRITT,
280 Broadway,
New York, N. Y.

138

JULIAN V. CARABBA,
5420—13th Avenue,
Brooklyn, N. Y.

Attorneys for Defendant
Sidney Rudish.

To:

THOMAS CRADDOCK HUGHES, Esq.,
Acting District Attorney of Kings County.

**Affidavit of Saul M. Meadow, Read in Support of Defendant Rudich's Motion in Arrest of Judgment, etc.** 139

COUNTY COURT

KINGS COUNTY

PEOPLE OF THE STATE OF NEW YORK

*against*

140

SIDNEY RUDISH, *et al.*,
*Defendants.*

State of New York }
County of New York } ss.:

SAUL M. MEADOW, being duly sworn, deposes and says:

I am one of the attorneys and assigned counsel for the defendant Sidney Rudish above named. 141

The said defendant was indicted on November 10th, 1942, for the crime of murder in the first degree, together with Morris Malinsky and Joseph Indivino.

That the said defendant Sidney Rudish pleaded "Not Guilty" to the indictment as above described on said November 10th, 1942, and was brought to trial in the County Court, Kings County, at Part 11, before Hon. Samuel S. Leibowitz and a jury, on June 14th, 1943.

That during the course of the trial, solely two witnesses testified against this defendant Sidney

142 *Affidavit of Saul M. Meadow, Read in Support of Defendant Rudish's Motion in Arrest of Judgment, etc.*

Rudish, implicating him as one of the co-conspirators in the commission of the alleged crime of the murder of Patrolman Leon Fox. That one of the said witnesses was one Davey Yellin, who testified that the defendant Sidney Rudish admitted to him that the defendant Sidney Rudish was at the scene of the crime and participated in the hold-up which resulted in the murder of Patrolman Leon Fox. The only other witness
143 who testified for the People against the defendant Sidney Rudish and one Nathan Spielfogel, who testified to admissions by the defendant Sidney Rudish.

Other than the admissions by these two witnesses, there was not one iota of evidence in the case to link the defendant Sidney Rudish with the crime.

That on cross-examination the witness Spielfogel testified that he did not appear before the Grand Jury and testify there.

That Davey Yellin is and was a co-conspirator
144 was ruled as a matter of law, and seemed apparent on its face, inasmuch as he participated in conveying messages to proposed co-conspirators. That the only testimony that could have appeared against the defendant Sidney Rudish before the Grand Jury was the testimony of the said David Yellin.

That Section 399 of the Code of Criminal Procedure provides that a conviction cannot be had upon testimony of an accomplice unless he be corroborated by such other evidence as tends to connect the defendant with the commission of the crime.

*Affidavit of Saul M. Meadow, Read in Support of Defendant Rudish's Motion in Arrest of Judgment, etc.* 145

That Section 258 of the Code of Criminal Procedure provides that an indictment ought to be found when all the evidence before the Grand Jury taken together is such as in their judgment would, if unexplained or uncontradicted, warrant a conviction by the Trial jury.

That since it is clear from the record that Spielfogel did not testify before the Grand Jury and I am of the opinion that Yellin did not testify before the Grand Jury, the indictment 146 should be dismissed as a matter of law.

That at the trial, when I was first apprised of the fact that Spielfogel did not testify before the Grand Jury and felt convinced that the indictment was invalid as a matter of law, I made various motions addressed to the Trial Court for an inspection of the Grand Jury minutes and for a dismissal of the indictment on the ground that the same was illegal.

That this application for an arrest of judgment is presently made due to the fact that it is imperative that a ruling be made upon this 147 motion prior to judgment being rendered herein. The importance of this case is clear inasmuch as it is mandatory for the Court to pronounce the sentence of death in reference to the defendant Sidney Rudish. If the Court will allow an inspection of the Grand Jury minutes prior to passing judgment, irrevocable harm will be avoided since a man's life is at stake.

That this application is made in good faith, and that I have personally appeared throughout the trial and am firmly convinced after listening to all of the witnesses for the People

148 *Affidavit of Saul M. Meadow, Read in Support of Defendant Rudish's Motion in Arrest of Judgment, etc.*

that the indictment was illegally obtained, inasmuch as it did not comply with the requisites for an indictment under the Code of Criminal Procedure as above outlined. Undoubtedly, the provisions of the Code of Criminal Procedure was passed so as to cover a case of this type wherein alleged co-conspirators attempt to implicate innocent persons in reference to the commission of a crime. The verdict of "Guilty"
149 should be set aside because it is against the weight of credible, reliable and believable testimony, and not beyond a reasonable doubt.

That no previous application has been made for the relief sought herein.

WHEREFORE, it is respectfully prayed that judgment in the above case in reference to the defendant Sidney Rudish be arrested and that an inspection of the Grand Jury minutes be granted, and the indictment be dismissed as being illegal and not in conformity with the
150 Code of Criminal Procedure.

SAUL M. MEADOW.

Sworn to before me this 16th day of July, 1943.

GERTRUDE FEINMAN,
Commissioner of Deeds,
City of New York,
My commission expires February 16, 1945.
N. Y. Co. Clk's No. 21.

151

## Order Denying Motion of Defendant Rudish in Arrest of Judgment, etc.

At a Term, Part II, of the County Court of Kings County, held at the Kings County Court House, 120 Schermerhorn Street, in the Borough of Brooklyn, City of New York, on the 21st day of July, 1943.

Present—Hon. SAMUEL S. LEIBOWITZ,
County Judge.

152

PEOPLE OF THE STATE OF NEW YORK,

*against*

SIDNEY RUDISH, *et al.*,
*Defendants.*

153

The above named defendant Sidney Rudish having moved this court for an order in arrest of judgment, for an order to inspect the Grand Jury minutes, for an order dismissing the indictment herein, and for an order setting aside the verdict of "Guilty" as being contrary to the weight of evidence and law, and the said motion having duly come on and been heard on July 19th, 1943;

Now, on reading and filing the notice of motion, dated July 16th, 1943, and the affidavit of

154 *Order Denying Motion of Defendant Rudish in Arrest of Judgment, etc.*

Saul M. Meadow, sworn to July 16th, 1943, in support of said motion, and upon all other papers and proceedings heretofore had herein, and after hearing Saul M. Meadow, Esq., and Fred G. Morritt and Julian V. Carabba, in support of said motion, and James A. McGough, Assistant District Attorney, in opposition thereto, and due deliberation having been had, it is

155 ORDERED, ADJUDGED AND DECREED that the said motion be, and the same hereby is, in all respects, denied.

Enter

SAMUEL S. LEIBOWITZ,
County Judge.

Granted July 21, 1943
FRANCIS J. SINNOTT,
Clerk.

156

157

## Order Denying Motion of Defendant Rudish to Inspect Grand Jury Minutes, etc.

At a Term, Part II, of the County Court of Kings County, held at the Courthouse thereof, 120 Schermerhorn St., Borough of Brooklyn, City of New York, on the 23rd day of July, 1943.

Present—Hon. SAMUEL S. LEIBOWITZ,
County Judge.

158

Indictment No. 27,141.

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THE PEOPLE OF THE STATE OF NEW YORK,
*Plaintiffs,*

*against*

SIDNEY RUDISH, *et al.*,
*Defendants.*

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159

The above named defendant Sidney Rudish having moved this court for an order, granting to the defendant an inspection of the grand jury minutes and for a further order, dismissing the indictment, and for an order setting side the verdict as contrary to the weight of evidence, and the said motion having come on to be heard on July 19, 1943,

Now upon reading and filing the notice of motion dated July 16, 1943; the affidavit of Saul

160 *Order Denying Motion of Defendant Rudish to Inspect Grand Jury Minutes, etc.*

M. Meadow, duly verified July 16, 1943, submitted in support of said motion and upon all other papers and proceedings heretofore had herein, and after hearing Saul M. Meadow, Esq., Fred G. Morritt, Esq., and Julian V. Carabba, Esq., by Fred G. Morritt, Esq., of counsel, attorneys for the defendant, Sidney Rudish, in support of said motion and James A. McGough, assistant district attorney, in opposition thereto
161 and due deliberation having been had, it is on motion of Thomas Cradock Hughes, acting district attorney of Kings County,

ORDERED that the said motion be, and the same hereby is, in all respects denied.

Enter

SAMUEL S. LEIBOWITZ,
County Judge.

Granted July 23, 1943,
162 FRANCIS J. SINNOTT,
Clerk.

## Notice of Motion by Defendants to Amend Record

163

COUNTY COURT

KINGS COUNTY

Indictment No. 27,141

THE PEOPLE OF THE STATE OF NEW YORK

164

*against*

MORRIS MALINSKY, *et al.*,
*Defendants.*

SIR:

PLEASE TAKE NOTICE, that upon the annexed affidavit of Joseph A. Solovei, attorney for defendant Morris Malinsky, sworn to the 9th day 165
of July, 1943; the affidavits of William F. X. Geoghan, Abraham J. Multer and Michael F. Longo, attorneys for defendant Joseph Indovino, sworn to respectively the 14th day of July, 1943, the 9th day of July, 1943 and the 9th day of July, 1943, the affidavits of Julian V. Carabba, Saul M. Meadow and Fred G. Moritt, attorneys for defendant Sidney Rudish, sworn to respectively the 15th day of July, 1943, the 9th day of July, 1943, and the 9th day of July, 1943; and upon the indictment and the trial, and upon all the pleadings and proceedings heretofore had

166 *Notice of Motion by Defendants to Amend Record*

herein, a motion will be made at Part 1 of the County Court, Kings County, at the Courthouse, 120 Schermerhorn Street, in the Borough of Brooklyn, City of New York, on the 19th day of July, 1943, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order amending the record in the above entitled action; and for such other and further relief as to the Court may seem just and
167 proper in the premises.

Dated: Brooklyn, New York July 15, 1943

Yours etc.,

JOSEPH A. SOLOVEI
Attorney for Defendant
Morris Malinsky
215 Montague Street
Borough of Brooklyn
City of New York.

168 WILLIAM F. X. GEOGHAN
Attorney for Defendant
Joseph Indovino
32 Court Street
Brooklyn, New York

ABRAHAM J. MULTER
Attorney for Defendant
Joseph Indovino
120 Broadway
New York City

*Notice of Motion by Defendants to Amend Record* 169

MICHAEL F. LONGO
Attorney for Defendant
Joseph Indovino
521 Fifth Avenue
New York City

JULIAN V. CARABBA
Attorney for Defendant
Sidney Rudish
5420—13th Avenue
Brooklyn, New York 170

SAUL M. MEADOW
Attorney for Defendant
Sidney Rudish
1450 Broadway
New York City

FRED G. MORITT
Attorney for Defendant
Sidney Rudish
280 Broadway
New York City 171

To:

THOMAS CRADOCK HUGHES, Esq.,
Acting District Attorney
Kings County

172 **Affidavit of Joseph A. Solovei, Read in Support of Defendants' Motion to Amend Record**

COUNTY COURT

KINGS COUNTY

THE PEOPLE OF THE STATE OF NEW YORK

173 *against*

MORRIS MALINSKY, *et al.*,
*Defendants.*

State of New York }
County of Kings } ss.:

JOSEPH A. SOLOVEI, being duly sworn, deposes and says:

174 That he is the attorney for the defendant Morris Malinsky, who was indicted with the defendants Sidney Rudish and Joseph Indovino by the Grand Jury of the County of Kings for the crime of Murder in the First Degree.

That the defendants were arraigned on said indictment and plead "not guilty". That on the 14th day of June, 1943, the indictment was moved for trial in the County Court, Kings County, Part 11 thereof, before County Judge Samuel S. Leibowitz, and a Jury was impanelled and duly sworn. That on the 15th day of June, 1943, witnesses were actually called and evidence taken at the

*Affidavit of Joseph A. Solovei, Read in Support of Defendants' Motion to Amend Record* 175

trial. That the case was tried continuously up to and including the 24th day of June, 1943. That on the 24th day of June, 1943, the Judge charged the Jury. The Judge then said to the Jury as follows:

> "You may retire, gentlemen, and consider your verdict. The 13th and 14th jurors, the alternates in the case, are now discharged from further duties in connection with 176
> this case, with the thanks of the Court. The defendants are remanded".

That the defendants were then actually taken into custody by the officers of the Court and remanded as directed by the Court, and removed from the Courtroom.

Your deponent, as counselor for the defendant Morris Malinsky, asks that the record be amended to show that after the defendants were remanded, the following took place in open Court in the presence of the jury and in the absence of the defendants: 177

> "Gentlemen, what is the attitude of counsel on both sides with reference to exhibits?
> Mr. McGough: I will consent they go in
> Mr. Geoghan: Except the statement.
> The Court: Well, who is here—you are the defendant Malinsky's counsel—what about the exhibits, Mr. Solovei?
> Mr. Solovei: I don't know,
> The Court: Do you consent or do you not?
> Mr. Solovei: I have no objection.

178 *Affidavit of Joseph A. Solovei, Read in Support of Defendants' Motion to Amend Record*

The Court: All right then, you consent.

What about the counsel for the defendant Rudish?

Mr. Carabba: The defendant Rudish excepts to any exhibits, because none of them are binding on him.

The Court: No; I mean if the Jury wants the exhibits in the jury room?

179 Mr. Meadow: No objection.

The Court: What about the exhibits, Mr. Geoghan, in behalf of Indovino?

Mr. Geoghan: I have no objection to the exhibits except one. That Mr. McGough and I have agreed should not go in.

Mr. McGough: That is the statement of Malinsky.

Mr. Geoghan: The statement that was read; that is the only one.

The Court: Has that been deleted?

Mr. McGough: In the case of that statement, I have an exact copy of it made
180 with those names taken out. If all parties consent we can mark that

Mr. Solovei: I object to the statement.

The Court: You must not say anything more with reference to it. Let us not say another word except, with reference to the confession of Malinsky so-called, the jury may have all of the other exhibits? Is that plain? Now, gentlemen, if you want this alleged confession read—if you want to refresh your recollection as to what it says—you may come back to the court room and I will have the stenographer

*Affidavit of Joseph A. Solovei, Read in Support of Defendants' Motion to Amend Record*

read it from his minutes. Is that plain? Even though I am not sending it into the jury room, that does not foreclose you from having your recollections refreshed as to what is in that document, namely, the alledged confession of Malinsky; but if you wish you may come back to the court-room and I will have Mr. Roberts read it to you.

Mr. Solovei: I take an exception to that your Honor

The Court: You have your exception. All right, you may retire, gentlemen, and consider your verdict."

That immediately after the above took place, in the absence of the defendants, the jury retired for their deliberations, and thereafter returned to the Courtroom, finding the defendant Morris Malinsky guilty of Murder in the First Degree, the defendant Sidney Rudish guilty of Murder in the First Degree, and the defendant Joseph Indovino guilty of Murder in the First Degree with a recommendation.

WHEREFORE, your deponent respectfully prays that an order be made herein amending the record as prayed for herein, and for such other and further relief as the Court may deem just and proper in the premises.

JOSEPH A. SOLOVEI

Sworn to before me this 9th day of July, 1943.

EMMA L. ORSCHIEDT
Notary Public,
Kings Co

184 **Affidavit of Julian V. Carabba, Read in Support of Defendants' Motion to Amend Record**

COUNTY COURT

KINGS COUNTY

THE PEOPLE OF THE STATE OF NEW YORK

185 *against*

MORRIS MALINSKY, *et al.*,
*Defendants.*

State of New York }
County of Kings } ss.:

JULIAN V. CARABBA, being duly sworn, deposes and says:

186 That he is one of the assigned counsel who appeared and represented the defendant Sidney Rudish.

That on the 14th day of June, 1943, your deponent appeared at the trial on behalf of the defendant Sidney Rudish, and more particularly, was present on the 24th day of June, 1943, when the case was concluded and given to the Jury for their consideration. That your deponent was actually present when Judge Leibowitz charged the Jury and when the Jury retires.

That your deponent has read the affidavit of

*Affidavit of Julian V. Carabba, Read in Support of Defendants' Motion to Amend Record* 187

Joseph A. Solovei, and in every respect substantiates and corroborates the facts therein contained and knows of his own knowledge that the same are true. That your deponent, as one of the assigned counsel for the defendant Sidney Rudish, joins in the application of Joseph A. Solovei that the record be amended to read as more fully stated in the affidavit of Joseph A. Solovei. That your deponent repeats and reiterates all the facts contained in the affidavit 188
of Joseph A. Solovei as part of this affidavit as though more fully set forth and stated herein.

WHEREFORE, your deponent prays that an order be made herein amending the record as more specifically prayed for in the annexed affidavit of Joseph A. Solovei.

JULIAN V. CARABBA

Sworn to before me this 15th day of July, 1943.

189

EMMA L. ORSCHIEDT
Notary Public
Kings Co.
Commission exp. Mar. 30, 1944

190

## Affidavit of Saul M. Meadow, Read in Support of Defendants' Motion to Amend Record

COUNTY COURT

KINGS COUNTY

THE PEOPLE OF THE STATE OF NEW YORK

191

*against*

MORRIS MALINSKY, *et al.*,
*Defendants.*

State of New York }
County of Kings } ss.:

SAUL M. MEADOW, being duly sworn, deposes
192 and says:

That he is one of the assigned counsel who appeared and represented the defendant Sidney Rudish.

That on the 14th day of June, 1943, your deponent appeared at the trial on behalf of the defendant Sidney Rudish, and more particularly, was present on the 24th day of June, 1943, when the case was concluded and given to the jury for their consideration. That your deponent was actually present when Judge Leibowitz charged the jury and when the jury retired.

*Affidavit of Saul M. Meadow, Read in Support of Defendants' Motion to Amend Record* 193

That your deponent has read the affidavit of Joseph A. Solovei, and in every respect substantiates and corroborates the facts therein contained and knows of his own knowledge that the same are true. That your deponent, as one of the assigned counsel for the defendant Sidney Rudish, joins in the application of Joseph A. Solovei that the record be amended to read as more fully stated in the affidavit of Joseph A. Solovei. That your depondent repeats and re- 194
iterates all the facts contained in the affidavit of Joseph A. Solovei as part of this affidavit as though more fully set forth and stated herein.

WHEREFORE, your deponent prays that an order be made herein amending the record as more specifically prayed for in the annexed affidavit of Joseph A. Solovei.

SAUL M. MEADOW

Sworn to before me this 9th day of July, 1943. } 195

EMMA L. ORSCHIEDT,
Notary Public,
Kings Co.
Term exp. Mar. 30, 1944.

196 **Affidavit of Fred G. Moritt, Read in Support of Defendants' Motion to Amend Record**

COUNTY COURT

KINGS COUNTY

THE PEOPLE OF THE STATE OF NEW YORK

197 *against*

MORRIS MALINSKY, *et al.*,
*Defendants.*

State of New York }
County of Kings } ss.:

FRED G. MORITT, being duly sworn, deposes and says:

198 That he is one of the assigned counsel who appeared and represented the defendant Sidney Rudish.

That on the 14th day of June, 1943, your deponent appeared at the trial on behalf of the defendant Sidney Rudish, and more particularly, was present on the 24th day of June, 1943, when the case was concluded and given to the jury for their consideration. That your deponent was actually present when Judge Leibowitz charged the Jury and when the Jury retired.

*Affidavit of Fred G. Moritt, Read in Support of Defendants' Motion to Amend Record* 199

That your deponent has read the affidavit of Joseph A. Solovei, and in every respect substantiates and corroborates the facts therein contained and knows of his own knowledge that the same are true. That your deponent, as one of the assigned counsel for the defendant Sidney Rudish, joins in the application of Joseph A. Solovei that the record be amended to read as more fully stated in the affidavit of Joseph A. Solovei. That your deponent repeats and re- 200
iterates all the facts contained in the affidavit of Joseph A. Solovei as part of this affidavit as though more fully set forth and stated herein.

WHEREFORE, your deponent prays that an order be made herein amending the record as more specifically prayed for in the annexed affidavit of Joseph A. Solovei.

FRED G. MORITT.

Sworn to before me this 9th day of July, 1943. } 201

EMMA L. ORSCHIEDT,
Notary Public,
Kings Co.

202 **Affidavit of Abraham J. Multer, Read in Support of Defendants' Motion to Amend Record**

COUNTY COURT

KINGS COUNTY

THE PEOPLE OF THE STATE OF NEW YORK

203 *against*

MORRIS MALINSKY, *et al.*,
*Defendants.*

State of New York }
County of Kings } ss.:

ABRAHAM J. MULTER, being duly sworn, de-
204 poses and says:

That he is one of the assigned counsel who appeared and represented the defendant Joseph Indovino.

That on the 14th day of June, 1943, your deponent appeared at the trial on behalf of the defendant Joseph Indovino, and more particularly, was present on the 24th day of June, 1943, when the case was concluded and given to the jury for their consideration. That your deponent was actually present when Judge Leibowitz charged the Jury and when the Jury retired.

*Affidavit of Abraham J. Multer, Read in Support of Defendants' Motion to Amend Record* 205

That your deponent has read the affidavit of Joseph A. Solovei, and in every respect substantiates and corroborates the facts therein contained and knows of his own knowledge that the same are true. That your deponent, as one of the assigned counsel for the defendant Joseph Indovino, joins in the application of Joseph A. Solovei that the record be amended to read as more fully stated in the affidavit of Joseph A. Solovei. That your deponent repeats and re- 206
iterates all the facts contained in the affidavit of Joseph A. Solovei as part of this affidavit as though more fully set forth as stated herein.

WHEREFORE, your deponent prays that an order be made herein amending the record as more specifically prayed for in the annexed affidavit of Joseph A. Solovei.

ABRAHAM J. MULTER

Sworn to before me this 9th day of July, 1943. } 207

EMMA L. ORSCHIEDT
Notary Public
Kings County
Term exp. Mar. 30, 1944.

208

## Affidavit of Michael F. Longo, Read in Support of Defendants' Motion to Amend Record

COUNTY COURT

KINGS COUNTY

THE PEOPLE OF THE STATE OF NEW YORK

209 *against*

MORRIS MALINSKY, *et al.*,
*Defendants.*

State of New York }
County of Kings } ss.:

MICHAEL F. LONGO, being duly sworn deposes and says:

210

That he is one of the assigned counsel who appeared for and represented the defendant Joseph Indovino.

That on the 14th day of June, 1943, your deponent appeared at the trial on behalf of the defendant Joseph Indovino, and more particularly, was present on the 24th day of June, 1943, when the case was concluded and given to the Jury for their consideration. That your deponent was actually present when Judge Leibowitz charged the Jury and when the Jury retired.

*Affidavit of Michael F. Longo, Read in Support of Defendants' Motion to Amend Record* 211

That your deponent has read the affidavit of Joseph A. Solovei, and in every respect substantiates and corroborates the facts therein contained and knows of his own knowledge that the same are true. That your deponent, as one of the assigned counsel for the defendant Joseph Indovino, joins in the application of Joseph A. Solovei that the record be amended to read as more fully stated in the affidavit of Joseph A. Solovei. That your deponent repeats and reiterates all the facts contained in the affidavit of Joseph A. Solovei as part of this affidavit as though more fully set forth and stated herein. 212

WHEREFORE, your deponent prays that an order be made herein amending the record as more specifically prayed for in the annexed affidavit of Joseph A. Solovei.

MICHAEL F. LONGO

Sworn to before me this 9th day of July, 1943. } 213

AMY WREN
Notary Public
Kings Co.

214 **Affidavit of William F. X. Geoghan, Read in Support of Defendants' Motion to Amend Record**

COUNTY COURT

KINGS COUNTY

THE PEOPLE OF THE STATE OF NEW YORK

215 *against*

MORRIS MALINSKY, *et al.*,
*Defendants.*

State of New York }
County of Kings } ss.:

WILLIAM F. X. GEOGHAN, being duly sworn,
216 deposes and says:

That he is one of the assigned counsel who appeared and represented the defendant Joseph Indovino.

That on the 14th day of June, 1943, your deponent appeared at the trial on behalf of the defendant Joseph Indovino, and more particularly, was present on the 24th day of June, 1943, when the case was concluded and given to the jury for their consideration. That your deponent was actually present when Judge Leibowitz charged the Jury and when the Jury retired.

*Affidavit of William F. X. Geoghan, Read in Support of Defendants' Motion to Amend Record*

217

That your deponent has read the affidavit of Joseph A. Solovei hereto annexed, and in every respect substantiates and corroborates the facts herein contained and knows of his own knowledge that the same are true. That your deponent, as one of the assigned counsel for the defendant Joseph Indovino, joins in the application of Joseph A. Solovei that the record be amended to read as more fully stated in the affidavit of Joseph A. Solovei. That your deponent repeats and reiterates all the facts contained in the affidavit of Joseph A. Solovei as part of this affidavit as though more fully set forth and stated herein.

218

WHEREFORE, your deponent prays that an order be made herein amending the record as more specifically prayed for in the annexed affidavit of Joseph A. Solovei.

WILLIAM F. X. GEOGHAN

219

Sworn to before me this 14th day of July, 1943.

HARRY P. ALPERT
Harry P. Albert, Notary Public
Kings Co Clks No. 201 Reg No. 14A5
N. Y. Co. Clerks No. 9, Reg No. 17A5
Commission expires March 30, 1945

220

## Order Denying Defendants' Motion to Amend Record

At a Term, Part 11, of the County Court of Kings County held at the Courthouse thereof, 120 Schermerhorn St., Borough of Brooklyn, City of New York, on the 23rd day of July 1943.

Present: Hon. SAMUEL LEIBOWITZ,
County Judge.

221

Indictment No. 27141

THE PEOPLE OF THE STATE OF NEW YORK
*Plaintiffs,*

*against*

MORRIS MALINSKY, *et al.*,
*Defendants.*

222

The above named defendants having moved this Court for an order amending the record in the above entitled action and the said motion having come on to be heard on the 19th day of July, 1943,

Now upon reading and filing the notice of motion dated July 15, 1943; the affidavits of Joseph A. Solovei, Abraham J. Multer, Michael F. Longo, Saul M. Meadow and Fred G. Morritt, all duly verified July 9, 1943; the affidavit of

*Order Denying Defendants' Motion to Amend Record* 223

William F. X. Geoghan, duly verified July 14, 1943; the affidavit of Julian V. Carraba, duly verified July 15, 1943, submitted in support of said motion, and upon all other papers and proceedings heretofore had herein, and after hearing Joseph A. Solovei, Esq., attorney for the defendant, Morris Malinsky; Abraham J. Multer, Esq., William F. X. Geoghan, Esq., and Michael F. Longo, Esq., by Abraham J. Multer, Esq., of counsel, attorneys for the defendant, 224
Joseph Indovino; Fred G. Morritt, Esq., Julian V. Carraba, Esq., and Saul M. Meadow, Esq., by Fred G. Morritt, Esq., of Counsel, attorneys for the defendant, Sidney Rudish, in support of said motion and James A. McGough, assistant district attorney, in opposition thereto, and after taking testimony, and due deliberation having been had, it is on motion of Thomas Cradock Hughes, acting district attorney of Kings County,

ORDERED that the said motion be, and the same 225
hereby is, in all respects denied.

Enter

SAMUEL S. LEIBOWITZ
County Judge

Granted Jul 23 1943
FRANCIS J. SINNOTT
clerk

226 **Notice of Motion by Defendant Rudish for an Order Making Grand Jury Minutes a Part of Record on Appeal**

COUNTY COURT

KINGS COUNTY

Indictment No. 27,141

227 PEOPLE OF THE STATE OF NEW YORK,

*against*

SIDNEY RUDISH, *et al.*,
*Defendants.*

SIR:

228 PLEASE TO TAKE NOTICE that, upon the annexed affidavit of Saul M. Meadow, sworn to August 5th, 1943, and upon all the previous papers, pleadings, and proceedings heretofore filed and had herein, and the indictment herein, the undersigned will move this court, at a Special Term Part I thereof, to be held in and for the County of Kings, at the County Court House in the Borough of Brooklyn, City of New York on August 9th, 1943, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order making the Grand Jury minutes a part of the Trial Record on appeal,

*Notice of Motion by Defendant Rudish for an Order Making Grand Jury Minutes a Part of Record on Appeal* 229

and for such other and further relief as to this court may seem just and proper in the premises.

Dated, New York, August 5th, 1943.

Yours, etc.,

SAUL M. MEADOW,
1450 Broadway
New York, N. Y. 230

JOHN J. FITZGERALD
32 Court Street
Brooklyn.

JULIAN V. CARABBA,
5420—13th Avenue
Brooklyn, N. Y.

Attorneys for Defendant
Sidney Rudish

To: 231

THOMAS CRADOCK HUGHES, Esq.,
Acting District Attorney for Kings County.

232 **Affidavit of Saul M. Meadow, Read in Support of Motion by Defendant Rudish to Make Grand Jury Minutes a Part of Record on Appeal**

COUNTY COURT

KINGS COUNTY

233 PEOPLE OF THE STATE OF NEW YORK,

*against*

SIDNEY RUDISH, *et al.*,
*Defendants.*

State of New York }
County of New York } ss.:

234 SAUL M. MEADOW, being duly sworn, deposes and says:

I am one of the Attorneys and assigned counsel for the above named defendant, Sidney Rudish.

That during the course of the trial numerous motions were made with reference to the minutes of the Grand Jury. A motion was made to have the Grand Jury minutes marked for identification, said motion having been granted. (See minutes p. 679)

That a formal written motion was made for an inspection of the Grand Jury minutes on

*Affidavit of Saul M. Meadow, Read in Support of Motion by Defendant Rudish to Make Grand Jury Minutes a Part of Record on Appeal* 235

July 19th, 1943. That the said motion was denied by the Hon. Samuel S. Leibowitz.

That the Defendant above named was indicted and tried for murder in the First Degree and was convicted of the said charge.

That a motion was made during the trial to dismiss the indictment on the ground that said indictment was found in violation of Section 258 of the Code of Criminal Procedure, said motion having been denied during the trial and later 236 when made in a formal motion on July 19th, 1943 by the Hon. Samuel S. Leibowitz.

That the basis for the said motion to dismiss the indictment was the fact that the only testimony before the Grand Jury with reference to the Defendant Sidney Rudish was the testimony of an accomplice, one David Yellin. That the testimony before the Grand Jury was not sufficient as a matter of law, if uncontradicted, to sustain a conviction of a trial jury.

It is necessary to preserve the Defendant's rights that the minutes of the grand jury, be 237 made a part of the Trial record on appeal so that the Appellate Court will have the proper record before it so as to determine the correctness of the denial of the motion to dismiss the indictment for violation of Section 258 of the Code of Criminal Procedure.

That no previous application has been made for the relief sought herein, except a withdrawn motion similar to this one.

238 *Affidavit of Saul M. Meadow, Read in Support of Motion by Defendant Rudish to Make Grand Jury Minutes a Part of Record on Appeal*

WHEREFORE it is respectfully prayed that an order be entered making the Grand Jury Minutes a part of the trial record on appeal.

SAUL M. MEADOW

Sworn to before me this 5th day of August, 1943.

239 BERNARD WEINSTEIN
Attorney & Counsellor-at-Law
Office & P. O. Address: 1450 B'way, N. Y. C.
N. Y. Co. Clk's No. 12, Reg. No. 4-F-472
Bronx Co. Clk's No. 5, Reg. No. F-44-13
Kings Co. Clk's No. 18, Reg. No. A-4024
Commission expires March 30, 1944

240

241

## Order Denying Motion of Defendant Rudish to Make Grand Jury Minutes a Part of Record on Appeal

At a Term of the County Court of Kings County, held at the Courthouse thereof, 120 Schermerhorn St., Borough of Brooklyn, City of New York, on the 11th day of August, 1943.

Present—Hon. SAMUEL S. LEIBOWITZ, 242
County Judge.

Indictment No. 27141

THE PEOPLE OF THE STATE OF NEW YORK,
*Plaintiffs,*

*against*

SIDNEY RUDISH, *et al.*,
*Defendants.*

243

A motion having been referred to me by Hon. Louis Goldstein, a County Judge presiding in Part I, on August 9, 1943, for an order directing that the clerk of this Court make the grand jury minutes in the above entitled action part of the trial record on appeal, and after reading and filing the notice of motion dated August 5, 1943, and affidavit of Saul M. Meadow, duly verified August 5, 1943, in support of said motion, and after hearing Saul M. Meadow, Esq.,

244 *Order Denying Motion of Defendant Rudish to Make Grand Jury Minutes a Part of Record on Appeal*

attorney for the defendant, Sidney Rudish, in support of said motion, and Thomas Cradock Hughes, Acting District Attorney of Kings County, by Edward H. Levine, Assistant District Attorney, in opposition thereto, and due deliberation having been had, it is on motion of Thomas Cradock Hughes, Acting District Attorney of Kings,

245 ORDERED, that the said motion be, and the same hereby is, in all respects denied.

Enter:

SAMUEL S. LEIBOWITZ
County Judge.

Granted Aug 11 1943
FRANCIS J. SINNOTT,
Clerk

246

247

## Order for Assignment of Counsel for Defendant Malinski to Perfect and Prosecute his Appeal

At a Term of the County Court, Part II thereof, held in and for the County of Kings, at the Courthouse, 120 Schermerhorn Street, in the Borough of Brooklyn, City and State of New York, on the 4th day of August, 1943.

248

Present: Hon. SAMUEL LEIBOWITZ,
County Judge.

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THE PEOPLE OF THE STATE OF NEW YORK,
*Plaintiffs,*

*against*

MORRIS MALINSKI,
*Defendant.*

---

249

The above named defendant having been indicted on November 10, 1942, charged with the crime of Murder in the First Degree, and having been convicted thereof and sentenced to be executed according to law,

Now, upon reading and filing the affidavit of said Morris Malinski, sworn to the 26th day of July, 1943, whereby it appears that said defendant is wholly destitute of means to employ coun-

250 *Order for Assignment of Counsel for Defendant Malinski to Perfect and Prosecute his Appeal*

sel or defray the incidental expenses necessary to perfect and prosecute an appeal from the aforesaid judgment of conviction, now, pursuant to the provision of Section 308 of the Code of Criminal Procedure, it is

ORDERED, that Joseph A. Solovei and David F. Price, attorneys and counsellors-at-law, be and they hereby are assigned as counsel for the
251 defendant herein, to perfect and prosecute his appeal from the judgment of conviction heretofore rendered and to render all necessary services in the defense of the defendant herein.

Enter

SAMUEL LEIBOWITZ
County Judge

Granted Aug. 4 1943
FRANCIS J. SINNOTT
Clerk

252

253

## Affidavit of Julian V. Carabba for Appointment of Counsel to Perfect and Prosecute the Appeal of Defendant Rudish

COUNTY COURT

COUNTY OF KINGS

Indictment #27141

254

THE PEOPLE OF THE STATE OF NEW YORK,
*Plaintiffs,*

*against*

SIDNEY RUDISH, *et al.*,
*Defendants.*

State of New York }
County of Kings } ss:

255

JULIAN V. CARABBA, being duly sworn, deposes and says: That he is an attorney and counsellor-at-law duly licensed to practice as such in this state.

That heretofore and on the 30th day of November, 1942, pursuant to Section 308 of the Code of Criminal Procedure, an order of this Court was made in this proceeding assigning your deponent together with Fred G. Morritt and Saul M. Meadow, Esqs., as counsel to the defendant Sidney Rudish herein, to defend him upon the charge of Murder in the First Degree whereof he stood indicted.

That thereafter and on the 19th day of July, 1943, the above named defendant Sidney Rudish

256 *Affidavit of Julian V. Carabba for Appointment of Counsel to Perfect and Prosecute the Appeal of Defendant Rudish*

was sentenced by this Court pursuant to a judgment of conviction of Murder in the First Degree heretofore rendered by a Jury of this Court. The Court imposed the mandatory sentence of death upon said defendant. Subsequent to the imposition of such sentence, the defendant Sidney Rudish, in open Court, requested the Court to assign counsel to him for the purpose of prosecuting an appeal from the
257 judgment of conviction and the sentence imposed thereunder.

The defendant stated to the Court that he was wholly destitute of means to employ counsel or to defray the incidental expenses of an appeal.

On behalf of the said defendant Sidney Rudish and in view of his urgent request made to this Court for the assignment of counsel as aforesaid, this application is respectfully addressed to this Court for an order designating and assigning counsel to the defendant herein, Sidney Rudish, to prosecute in his behalf, an
258 appeal from the judgment of conviction of murder in the first degree and the sentence imposed thereunder.

For which no previous application has been made, except as aforesaid, by the defendant Sidney Rudish, in person in open Court.

JULIAN V. CARABBA

Sworn to before me this 20th day of July, 1943.

LILLIAN R. KAPLAN
Notary Public:
Kings Co. #350
Comm. expires March 30/1944

259

**Order for Assignment of Counsel for Defendant Rudish to Perfect and Prosecute his Appeal**

At a Term of the County Court, held in and for the County of Kings, at 120 Schermerhorn Street, in the Borough of Brooklyn, City of New York, on the 20th day of July, 1943.

Present: Hon. SAMUEL S. LEIBOWITZ,
Judge of the County Court.

260

Indictment #27141

THE PEOPLE OF THE STATE OF NEW YORK,
*Plaintiffs,*

*against*

SIDNEY RUDISH, *et al.*,
*Defendants.*

261

Upon reading and filing the annexed affidavit of Julian V. Carabba, Esq., duly verified the 20th day of July, 1943, and upon all of the proceedings heretofore had herein, it is on motion of Julian V. Carabba, Esq.,

ORDERED that Julian V. Carabba, Esq. of 1420—13th Avenue, Brooklyn and Saul M. Meadow, Esq. of 1450 Broadway, N. Y. C. Attorneys and Counselors at Law be and they

262 *Order for Assignment of Counsel for Defendant Rudish to Perfect and Prosecute his Appeal*

hereby are assigned as counsel to the defendant Sidney Rudish to prosecute an appeal to the Court of Appeals for and on behalf of the said defendant Sidney Rudish from the judgment of conviction of murder in the first degree and sentence imposed thereunder on the 19th day of July, 1943.

Enter

263

SAMUEL S. LEIBOWITZ
County Judge

Granted July 20, 1943
FRANCIS J. SINNOTT
Clerk

264

**Amended Order for Assignment of Counsel for Defendant Rudish to Perfect and Prosecute his Appeal** 265

At a Term of the County Court, held in and for the County of Kings, at 120 Schermerhorn Street, in the Borough of Brooklyn, City of New York, on the 28th day of July, 1943.

Present: Hon. SAMUEL S. LEIBOWITZ,
Judge of the County Court. 266

Indictment #27141

THE PEOPLE OF THE STATE OF NEW YORK,
*Plaintiffs,*

*against*

SIDNEY RUDISH, *et al.*,
*Defendants.*

267

Upon reading and filing the affidavit of Julian V. Carabba, Esq., verified the 20th day of July, 1943, and upon all proceedings heretofore had herein, it is on motion of Julian V. Carabba, Esq.,

ORDERED that the Order of this court heretofore made and entered on the 20th day of July, 1943, be and the same is hereby amended to read as follows:

268 *Amended Order for Assignment of Counsel for Defendant Rudish to Perfect and Prosecute his Appeal*

ORDERED that Julian V. Carabba, Esq., of No. 5410—13th Avenue, Brooklyn, N. Y.; (SSL) Saul M. Meadow, Esq., of No. 1450 Broadway, New York City; and Hon. John J. Fitzgerald, of No. 32 Court Street, Brooklyn, N. Y. City, attorneys and counselors at law, be and they hereby are assigned as counsel to the defendant Sidney Rudish to prosecute an appeal to the Court of Appeals for and on in behalf of the
269 said defendant Sidney Rudish from the judgment of conviction of Murder in the first degree and sentence imposed thereunder on the 19th day of July, 1943.

Enter:

SAMUEL S. LEIBOWITZ
County Judge: Kings County

Granted Jul 28 1943
FRANCIS J. SINNOTT
270 Clerk

271

## Judgment of Conviction of Defendant Malinski

At a Term of the County Court held in and for the County of Kings, at 120 Schermerhorn Street, in the Borough of Brooklyn, City of New York, on the 19th day of July, 1943.

Present: Hon. Samuel S. Leibowitz,
County Judge.

272

27141

The People of the State of New York,

*against*

Morris Malinski, true name Morris Malinsky

273

Indicted for Murder, First Degree, and convicted thereof, as charged, by the verdict of a jury on the 24th day of June, 1943, without any recommendation of life imprisonment.

Being personally present and sworn says: My true name is Morris Malinsky; I am 24 years of age; I was born in Brooklyn; I reside at 714 Hinsdale Street; I am a helper on truck; I am married; I can read; I have a public school education, grade 8B; I am a Hebrew, irregular attendant; my father is living; I am temperate; I do

274 *Judgment of Conviction of Defendant Malinski*

not use drugs; I have previously been convicted of one felony.

The defendant and his counsel being present and the defendant being asked if he had anything to say why the judgment of the law should not be pronounced against him, and he having nothing to say, the Court pronounced judgment as follows:

WHEREUPON, it is Ordered and Adjudged by
275 tne Court that the said Morris Malinski, true name Morris Malinsky, for the Murder in the First Degree of Leon Fox, whereof he is convicted, be and he hereby is sentenced to the punishment of death and that within ten days from this date the Department of Correction of the City of New York deliver the said Morris Malinski, true name Morris Malinsky, together with a warrant of this Court, to the agent and warden of Sing Sing State Prison at Ossining, where he shall be kept in solitary confinement until the week beginning with Sunday, August 29, 1943, and that upon some day within the week
276 so appointed the agent and Warden of the said Sing Sing Prison at Ossining, shall do execution upon him, the said Morris Malinski, true name Morris Malinsky, in the mode and manner prescribed by law.

A true extract from the minutes.

FRANCIS J. SINNOTT
Clerk.

(Seal)

277

## Death Warrant of Defendant Malinski

COUNTY COURT

KINGS COUNTY

27141

THE PEOPLE OF THE STATE OF NEW YORK,

*against* 278

MORRIS MALINSKI, true name MORRIS MALINSKY

State of New York }
County of Kings } ss:

To the Agent and Warden of Sing Sing State Prison at Ossining, New York:

WHEREAS, at a trial term of the County Court, 279 held in and for the County of Kings on the 14th, 15th, 16th, 17th, 18th, 19th, 21st, 22nd, 23rd and 24th days of June, 1943, the above named Morris Malinski, true name Morris Malinsky, was put on trial for the murder of Leon Fox, committed in the County of Kings on or about the 15th day of February, 1941, and upon said trial the said Morris Malinski, true name Morris Malinsky, having been found guilty of Murder in the First Degree on June 24, 1943, for the killing of the said Leon Fox without any recommendation of life imprisonment, and on the 19th day of July,

280 *Death Warrant of Defendant Malinski*

1943, having been sentenced to be put to death in the manner provided by law on some day in the week beginning with the 29th day of August, 1943;

Now it is hereby ordered that the execution of the said sentence be done upon the said Morris Malinski, true name Morris Malinsky, by you, the said Warden of Sing Sing State Prison at Ossining, New York, in the manner provided by law,
281 on such day in the week beginning on the 29th day of August, 1943, as you shall determine and within the walls of your said prison or inclosure thereto adjoining.

Witness my hand at the Borough of Brooklyn, City of New York, County of Kings aforesaid on the 19th day of July, 1943.

Samuel S. Leibowitz
County Judge of Kings County.

282 Given under my hand and attested by the seal of the said Court this 19th day of July, 1943.

Francis J. Sinnott
(Seal) Clerk.

283

## Judgment of Conviction of Defendant Rudish

At a Term of the County Court held in and for the County of Kings, at 120 Schermerhorn Street, in the Borough of Brooklyn, City of New York, on the 19th day July, 1943.

Present: Hon. SAMUEL S. LEIBOWITZ,
County Judge.

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27141

THE PEOPLE OF THE STATE OF NEW YORK,

*against*

SIDNEY RUDISH

285

Indicted for Murder, First Degree, and convicted thereof, as charged, by the verdict of a jury on the 24th day of June, 1943, without any recommendation of life imprisonment.

Defendant being personally present refused to be sworn or to answer any questions.

The defendant and his counsel being present and the defendant being asked if he had anything to say why the judgment of the law should not be pronounced against him, and he having nothing to say, the Court pronounced judgment as follows:

286 *Judgment of Conviction of Defendant Rudish*

WHEREUPON, it is Ordered and Adjudged by the Court that the said Sidney Rudish, for the murder in the First Degree of Leon Fox, whereof he is convicted, be and he hereby is sentenced to the punishment of death and that within ten days from this date the Department of Correction of the City of New York deliver the said Sidney Rudish, together with a warrant of this Court, to the agent and warden of Sing Sing State Prison at Ossining, where he shall be kept
287 in solitary confinement until the week beginning with Sunday, August 29, 1943, and that upon some day within the week so appointed the agent and warden of the said Sing Sing Prison at Ossining, shall do execution upon him, the said Sidney Rudish, in the mode and manner prescribed by law.

A true extract from the minutes.

FRANCIS J. SINNOTT
Clerk.

(Seal)

288

289

## Death Warrant of Defendant Rudish

COUNTY COURT

KINGS COUNTY

27141

THE PEOPLE OF THE STATE OF NEW YORK,

*against* 290

SIDNEY RUDISH

State of New York }
County of Kings } ss:

To the Agent and Warden of Sing Sing State Prison at Ossining, New York:

WHEREAS, at a trial term of the County Court, 291
held in and for the County of Kings on the 14th, 15th, 16th, 17th, 18th, 19th, 21st, 22nd, 23rd and 24th days of June, 1943, the above named Sidney Rudish was put upon his trial for the murder of Leon Fox, committed in the County of Kings on or about the 15th day of February, 1941, and upon said trial the said Sidney Rudish having been found guilty of Murder in the First Degree on June 24, 1943, for the killing of the said Leon Fox without any recommendation of life imprisonment, and on the 19th day of July, 1943, having been sentenced to be put to death in the

292 *Death Warrant of Defendant Rudish*

manner provided by law on some day in the week beginning with the 29th day of August, 1943;

Now it is hereby ordered that the execution of the said sentence be done upon the said Sidney Rudish by you, the said Warden of Sing Sing State Prison at Ossining, New York, in the manner provided by law, on such day in the week beginning on the 29th day of August, 1943, as
293 you shall determine and within the walls of your said prison or inclosure thereto adjoining.

Witness my hand at the Borough of Brooklyn, City of New York, County of Kings aforesaid on the 19th day of July, 1943.

Samuel S. Leibowitz
County Judge of Kings County.

Given under my hand and attested by the seal of the said Court this 19th day of July, 1943.

294 Francis J. Sinnott
(Seal) Clerk.

295

## Case and Exceptions

COUNTY COURT OF THE COUNTY OF KINGS

PART 2

Before—Hon. SAMUEL S. LEIBOWITZ,
County Judge, and a Special Jury.

THE PEOPLE OF THE STATE OF NEW YORK

*against*

296

MORRIS MALINSKI, SIDNEY RUDISH and JOSEPH INDOVINO,

*Defendants.*

Indictment No. 27141. Murder, First Degree.

Brooklyn, N. Y., June 14, 1943.

APPEARANCES:

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For the People: JAMES A. McGOUGH, Esq., Assistant District Attorney.
For the Defendant Malinski: Jos. A. SOLOVEI, Esq.
For the Defendant Sidney Rudish: Messrs. JULIAN V. CARABBA, FRED G. MORRITT and SAUL M. MEADOW.
For the Defendant Joseph Indovino: Messrs. WILLIAM F. X. GEOGHAN, MICHAEL LONGO and ABRAHAM MULTER.

RALPH E. ROBERTS,
LOUIS LEHMAN,
Official Stenographers.

298 *Colloquy*

(A jury of twelve was impaneled and sworn and two alternates were selected and sworn by direction of the Court.

The jury was thus completed at 11:55 P. M.)

The Court: Gentlemen of the jury, we are about to take a recess until tomorrow morning at 10:30 o'clock. I am going to give you certain instructions which will not be as elaborate henceforth as they are now. I give you these in-
299 structions because the law requires me so to do. They are as follows: Please do not discuss this case among yourselves in any shape, form or manner. Please follow these instructions literally. Make no comment about the respective counsel in the case or about any one connected with the Court or about the District Attorney; and, as the case progresses, make no comments about the witnesses. Do not tell your neighbor what you thought of so-and-so on the witness stand, or what you thought of so-and-so, as a lawyer. Do not do that even when you are alone
300 in your private rooms; because if it should come to my ears (and it will) a very unpleasant situation may arise. Do not permit any one else to speak to you about this case, or to discuss it in your presence. You may talk about everything else under the sun but this particular case or any feature of it. You are required to keep your minds open. You are judges now, cloaked with the responsibilities of judges; and, acting as judges, you must maintain a judicial attitude. A good judge waits until he hears everything that need be said about a subject before he makes up his mind. In other words, he reserves

decision, and your decision should be reserved until the last word has been said in the case by the Court, and you have retired into the sanctity of your jury room. I say again, you must keep an open mind. Do not form or express any opinion as to the guilt or innocence of these defendants on trial or either of them, or any of them. Now, you shall have access to the daily press, but any article pertaining to this case will be deleted by the court officials. I am going to keep you altogether during the balance of 302
this trial. Do not charge that to the lawyers for the defense, and do not charge that to the District Attorney. Neither of them have had anything to do with it. Charge that up to me, if you feel aggrieved, because you are being kept together in this uncomfortable weather; you blame it on the Judge. Just hold it against me. I feel that in the interest of justice, and in the sound exercise of my discretion, that it is best that you be kept together during the course of this particular trial; but I shall try to expedite the case as much as I can, so that you will not be 303
unduly delayed in the return to your homes, and to your daily affairs. We shall not work night sessions unless it becomes absolutely necessary, but we shall keep at a steady pace, and I do hope to have you out as soon as possible. I believe these are about all the instructions that are necessary, unless counsel or the District Attorney have any additional ones in mind.

Mr. Meadow: I understood your Honor to say during the noon recess that they were going to be in Coney Island, and I think that they should not pass the scene of the accident.

304 *Colloquy*

The Court: I have already thought of that. I have already made arrangements with Captain Gannon that that should not be done. These men will be transported through Neptune Avenue; from Ocean Parkway to Neptune Avenue, and to the Half Moon Hotel, and under no circumstances to go along Surf Avenue, but to go through the back way.

Mr. Meadow: That is satisfactory.

The Court: Gentlemen, every bit of comfort
305 that can possibly be given you will be given you. We will try to make your stay as comfortable and as pleasant and as nice as possible and if you have anything that really bothers you, if it is at all within reason,—do not ask anything that is unreasonable—I am sure you will find Captain Gannon and his men courteous and considerate, and attentive to your wants. I will see you again tomorrow morning at 10:30 o'clock, gentlemen. You may retire.

(The jury retires from the court-room.)

306 The Court: Defendants will be remanded.

(Whereupon an adjournment was taken until June 15, 1943, at 10:30 o'clock A. M.)

AFTER RECESS, 10:30 O'CLOCK A. M.

Brooklyn, N. Y., June 15, 1943.

TRIAL RESUMED.

Mr. Geoghan: On behalf of Indovino and Rudish, both of whom have assigned counsel, I move that we be supplied with over-night copy of the minutes.

The Court: The motion will be granted. The Court will order daily copy for the Court, for counsel for the defendant Indovino, and counsel for the defendant Rudish. I take it the District Attorney desires daily copy? 308

Mr. McGough: I would like to have daily copy, Judge.

The Court: Very well.

Mr. McGough opened to the jury for the People as follows:

Mr. McGough: May it please your Honor, Gentlemen of the Defense, Mr. Foreman and Gentlemen of the Jury: 309

At this time the law demands and requires that the District Attorney must make a statement as to what he intends to prove with respect to the charges against these three defendants.

You know by this time, gentlemen, that there are three men on trial, whose names are Morris Malinski, Sidney Rudish, Joseph Indovino. The indictment in this case is very brief and I will at this time read it to you. It was filed on the 10th of November, 1942 and it reads as follows:

"County Court of the County of Kings. The People of the State of New York, Plaintiffs,

against Morris Malinski, Sidney Rudish and Joseph Indovino, defendants. The Grand Jury of the County of Kings, by this indictment, accuse the defendants of the crime of murder in the first degree, committed as follows: The defendants, on or about February 15th, 1941, in the County of Kings, acting in concert with Abraham Beitler, deceased, willfully, feloniously and of malice aforethought, shot and killed Leon Fox with a pistol. Signed, Thomas Cradock-
311 Hughes, Acting District Attorney."

Now, gentlemen, to prove the allegations of this indictment against these defendants, I intend to call witnesses here who will testify that on Saturday night, the 15th day of February, 1941, there was a theater known as the Loew's Coney Island Theater, located on Stillwell Avenue and Surf Avenue, in the Borough of Brooklyn, County of Kings; that a man named Herman Dolinsky, the manager of the theater, shortly before the hour of 11 p. m. on that particular night, assembled part of the receipts that the
312 theater had taken at the cash desk that day, which amounted to $770: $700 in bills and $70 in quarters. The testimony will show that there were seven rolls of quarters, each roll containing ten dollars. That a patrolman attached to the 60th Precinct, which is known as the Coney Island Precinct, was present, whose name was Leon Fox. It was Fox's duty to escort Mr. Dolinsky down about two blocks along Surf Avenue to West 12th Street, where Dolinsky's duty was to deposit the $770 in a night depository of the Brooklyn Trust Company. Testimony will show that as they left the theater they

proceeded along the north side of Surf Avenue, and as they reached West 12th Street they sort of crossed at an angle, and as they touched the curbstone on that particular corner Dolinsky saw an automobile, which will be described in detail here in this case. The lights of that automobile were out. The right front door of that automobile was open, and as they proceeded down West 12th Street, a man leapt from the automobile, brushed Dolinsky to one side, and immediately fired a series of shots at the policeman. 314 That as Dolinsky was running down the street he was yelling "Help! Police!" when some voice coming from the position where the policeman was and this man who was firing, said, "Drop that bag or I will drop you"; whereupon Dolinsky threw the bag towards the man that made the outburst, and the man picked the same up and jumped back into the car, and then with a burst of speed that automobile dashed across Surf Avenue, travelling in a northbound direction towards the street known as Neptune Avenue.

315 Gentlemen, I want to make a very frank statement at this time. The People in this case do not have any eye witnesses who were at this particular spot; but I intend to offer complete and detailed evidence which at the proper time will convince you of the guilt of each and every one of these three men.

I have witnesses to show that there were two shots fired, and there was a burst of flame coming from the place where these shots had emanated from. That particular man, who was on a lawful mission in Coney Island, travelled

two blocks in his car and made known that fact to two police officers who will be called here as witnesses. They were at the theater which is two blocks west of the occurrence that I have just mentioned. Those two police officers swung their radio patrol car back and they reached the scene, and when they arrived there they saw Patrolman Fox lying on the ground.

Dolinsky will testify that as the car shot across Surf Avenue on its get-away, Patrolman Fox,
317 who was lying in a supine position on his back, fired six shots after the automobile.

There will be testimony here that the first two officers, Patrolman Rabbitt and Sergeant Bremeier rushed Fox to an automobile and took him up to the Coney Island Hospital.

This occurred, gentlemen, just a short time after 11 o'clock, and about the hour of 12:07 that particular night, Patrolman Fox, with a wound through-and-through the upper left portion of his chest, and another wound on the other side which did not go through—and the bullet of
318 which the Medical Examiner will testify he recovered—expired there at the hospital.

This case, gentlemen, went unsolved for a period of about twenty months. Sometime about October 27th, the police officers and detectives assigned to this particular borough obtained some information, and I intend to offer some proof here to show that about three or four nights before this particular occurrence the defendant Indovino, over in New York, met a witness who will testify here, and said he had something good in Coney Island, a stickup of a motion picture theater, where you would get at

least a "Grand"—a common word for a thousand dollars—and that the policeman would put up without any trouble and that the job just could be done without any trouble at all. He told these people he lived in Coney Island at that time, and because he was known down there he could not go with them, but he was glad to give them the job or the information that these other men wanted.

I am going to show you that there were three men in the car. I might say there were two in 320
the front, one driving, and one alongside of him, and there was another figure crouching down in the back of that car. I intend to show here by testimony elicited from witnesses that that car after going up West 12th Street turned left on Neptune Avenue and when it got to Stillwell Avenue turned left and was parked at a spot 2844 Stillwell Avenue. I intend to offer some engineering testimony here, with the permission of the Court and the consent of counsel, that will be of some service to show the general layout and to facilitate the handling of the testimony, 321
for the benefit of the Court and jury. I intend to offer some photographs that depict this particular scene as it was on the night in question.

I intend to offer testimony that a short time after this a patrolman named Carboy, who knew Patrolman Fox, found this particular automobile down at that place on Stillwell Avenue, and that as he made an examination of it he found the ignition wires were twisted, as some of you may know, can be done—the ignition was "jumped" so to speak.

He will testify that as he examined the car he

found a hat right underneath the car. I intend to offer testimony here that Rudish was driving that car—Rudish was the driver, Beitler was in the front seat, and the defendant Malinski was in the back seat. Three of them visited the scene and perpetrated this offense, and Indovino was the tipster. And if you follow the law given you by his Honor, the Judge, you will know that the People have the right to proceed against all three defendants right here on the charge of murder in the first degree.

I intend to show that Rudish was in the vicinity, the general vicinity of Pine and Fulton Streets, Borough of Brooklyn, County of Kings; that he was out there to contact a man by the name of Sonenblick, from whom he wanted to get a job for a friend of his; that when he was out in the neighborhood he found that he had left the address of Sonenblick at home, and he endeavored to locate the man that gave him the address, in New York on the telephone; that there was a conceived, planned, conspiracy between these defendants right here on trial and the dead man Beitler, that they were to go at nine o'clock that night, that Rudish was to supply the car, that Beitler was to supply the guns, two 38 and two 45 calibre guns; and that Malinski was to go along.

I intend to show that this automobile was taken from the corner of Pine and Fulton Streets by Rudish, when he went out to find Sonenblick and could not find him, and when he found that time was running against him, and he was in danger of being late for the appointment in the lower east side of Manhattan, and he took this

Ford 1936, blue, convertible coupe automobile, with a cloth top.

I intend to show that a short time after this car was recovered it was identified by all the persons who were at that particular location. They identified it as the car that left that scene with a burst of speed and went off, as I said, in a northerly direction up West 12th Street.

The Medical Examiner will testify that there were two wounds: One a through-and-through wound in the patrolman's chest, and the other one in the lower right hand portion of the abdomen. He will tell you that the cause of death was two gun shot wounds.

I intend to show that after this particular occurrence, the defendant Malinski and the deceased, Beitler, left the car and proceeded to New York by taxicab; that the defendant Rudish left the car and went up on the station of the B.M.T. and proceeded to New York by train, and that while he was up on the platform, by his own words and his own admissions, he said he heard all the sirens of the Police Department blowing around Coney Island, but he went off to New York. And when he got to New York he visited a certain place where there was a card game going on, and he called out a certain individual whom I am going to call here as a witness, and he told him the whole thing, told him about the fireworks, told him how they shot the cop, told him how the cop went down and how the cop fired the bullets after the fleeing car.

I intend to show by another witness that on the following day, which was Sunday, this same defendant Rudish told the same story to another

328 one of his cronies, another one of the pals of all of the four men mentioned here—told the story in detail.

And at the particular time, gentlemen, I intend to show by competent, legal proof here, that Malinski, when he was arrested, on the 27th day of October, he made a full, voluntary confession, explaining in detail everything that was done. I intend to show that after he made that statement
329 he took the police officers right down to the scene and told them how he went about it. At that particular time he told the police that the hat that was found at the scene was his hat; that he had obtained it a short time before from a young man named Levine, who is now in the Army, but whose present whereabouts I will be able to explain here. He initialed the hat and made a full disclosure.

This, gentlemen, is what I intend to prove, in brief. I do not intend to go into details. I would much prefer to have you hear the testi-
330 mony as it flows from the lips of the witnesses.

But based on what you will hear today and the succeeding days, I have no doubt in my mind at all that you will have little difficulty in arriving at a true and fair verdict, a verdict of murder in the first degree as against all three defendants on trial.

Mr. Solovei opened to the jury for the defendant Malinski as follows:

Mr. Solovei: May it please your Honor, Mr. McGough, Associate Counsel, and Gentlemen of the Jury:

*Opening Statement on Behalf of Defendant Malinski* 331

I am not going to burden you at this time with any lengthy opening. I am just going to ask you gentlemen at this time to keep your minds open. I am going to ask you gentlemen not to make any hasty decision here until the entire case is presented to you for your consideration.

I have listened attentively to the District Attorney's remarks, and we intend to refute the statements made by the District Attorney. We will show you under what circumstances Malinski 332
had to say something to the police, and under what circumstances he did make a statement that has been called a confession; and after you have listened to what we will present to you here for your consideration, I think, gentlemen, you will have no difficulty at all in coming to the conclusion that Malinski had nothing at all to do with this case; that he did not participate in the crime directly or indirectly; that he did not aid and abet one Beitler, as alleged in this indictment, in the killing of one Fox, on the 15th day of February, 1941; that he was not at the scene 333
of the crime, had nothing to do with the crime. And I intend to show you, gentlemen here, that from the time that he left the Elmira Reformatory, to which I told you very frankly he had been committed for having previously committed a crime—up to the day of his arrest, that he worked every day; that he never was without employment, and that at the time he was arrested, about 7:15 a.m., that he was on his way to work, and had a very substantial job, receiving a very good salary—that the young man worked at gainful employment, and had nothing at all to do with this crime, did not participate in the crime, and knows nothing at all about it.

334 *Opening Statement on Behalf of Defendant Rudish*

So I just ask you, gentlemen, at this time, to keep your minds open and wait until you listen to all this testimony that will be adduced here, and determine for yourselves whether any statement made by Malinski was a voluntary statement or whether or not it was made in violation of the law, as the Court will charge you on the law later on.

335 Mr. Carabba opens to the jury for the defendants Rudish as follows:

Mr. Carabba: Mr. McGough, your Honor, Gentlemen of the jury: On behalf of the defendant Rudish, I am going to say to you at this time and I ask to keep your minds open, arrive at no conclusion until all of the evidence is in on both sides. We expect to show to your satisfaction that the defendant Rudish never knew Indovino on the night of February 15, 1941; the first time that we ever knew that Indovino existed was at the arrest of Indovino and the arrest of Rudish.

336 You have probably heard that the arrest in this case was not made until approximately twenty months after the commission of the crime. We are charged in this indictment with acting in concert with one Beitler, on the evening of February 15, 1941. We say we were not there, we know nothing about it, we did not know Indovino, never met him until after his arrest. With that in mind I ask you to form no opinion about this case until all of the evidence is in on both sides.

Mr. Geoghan opened to the jury for the defendant Indovino as follows:

*Opening Statement on Behalf of Defendant Indovino* 337

Mr. Geoghan: First of all, I have a preliminary motion. I move to dismiss the indictment on behalf of Indovino, on the District Attorney's opening. He stated here that three or four days before this crime was committed Indovino met a fellow and I understood him to say that he said, "There is something soft or easy in Coney Island." That he stopped there. If that is all he is to prove in this case, there is no case against Indovino, and I make that motion at this 338
time.

The Court: Motion denied.

Mr. Geoghan: Exception.

Mr. Geoghan: If your Honor please, Mr. Foreman and Gentlemen of the jury:

I concur in what Mr. Carabba said with regard to Indovino and Rudish. The same testimony will be given on behalf of Indovino, that they never knew each other, never met each other, never saw each other until after they were arrested; and the arrest of Indovino was made on October 24th, 1942, the crime having been 339
committed on February 15th, 1941.

Now, like Rudish, according to Mr. Carabba, Indovino has as much participation in this robbery as any of you gentlemen sitting in the jury at the present time, as we shall prove to you—and we are not holding from you just what the proof is on behalf of Indovino, nor did we hold it from the District Attorney. We let him know two weeks ago what our proof was.

You know, if I were to ask you suddenly, gentlemen, where you were on February 15th, 1941, I wager not one of you could tell me, unless perchance you kept a daily diary, and that

340 does not seem to be as customary in these days as it was when we were boys. But sometimes Providence steps in where a man's life is at stake or his liberty is at stake, and supplies the information. We happen to know and Indovino happens to know just exactly where he was on February 15th, 1941, and so do the witnesses whom we shall call in his behalf. You know sometimes you can figure a date because of an
341 event that makes a deep impression on your minds, an event of a great amount of importance. The event which occurred on February 15th, 1941, which makes February 15th, 1941 stand out in bold relief as far as Mr. Indovino is concerned, he is going to tell you and his witnesses will corroborate him at that time. We have already told this to the District Attorney. We have served him with our Bill of Particulars.

At six o'clock on the night of February 15th, Indovino visited, as was his nightly custom, his fiancee—then his fiancee and now his wife. She
342 lived at that time at 2118 Ocean Parkway, next door to the Ambrosia family, who lived at 2120 Ocean Parkway. He went there at six o'clock. He was not working on Saturdays, that was his weekly custom. Saturday was a free day for him. And he was regularly employed at that time, regularly employed right up to and including the day of his arrest. We are going to show you that he arrived there at six o'clock in the evening, spent the entire evening with his fiancee from six o'clock in the evening, when he arrived, until 1:30 in the morning. And he knows it was 1:30 in the morning when he left (that was Sunday morning, February 16th) be-

343

cause he always stayed with his fiancee as long as he could, and that was until the last bus left at Avenue U, I think it is, and Ocean Parkway. It was only directly across the street from Miss Skoura's house. Miss Skoura was the fiancee. He would wait on the porch until he saw that bus come along. That bus left ther every morning at half past one. The family next door saw him on the porch at six o'clock in the evening, and they remembered the day because they were 344
going over to attend a wedding rehearsal of a niece, of a Miss Angelotti, who will testify here. She came over to Mrs. Ambrosio's house, and she and Mrs. Ambrosio, at eight o'clock, left for the rehearsal of this wedding, that took place the next day at Our Lady of Grace Church. They returned from the rehearsal around midnight, and seeing Indovino and Miss Skoura on the porch, as they had seen them before they left, at eight o'clock, they went and remained there with them until about one o'clock and then they returned. We will produce all that proof here, 345
gentlemen, and we will show you in addition to that that he knew Malinski—never by name—used to see him up in Elmira Reformatory—never was chummy with him, had nothing to do with him in connection with this crime. As for this man Beitler, whose name has been mentioned, as far as he knows, he never knew him in his life.

While we don't have to establish our innocence, and they have to establish his guilt, we are going to offer that affirmative proof on the record here and leave it to you, gentlemen, to determine as to whether or not the District Attorney

and the police have a guilty man in this fellow, Indovino.

We ask you to reserve decision until the evidence is all in, and then give us a fair and just verdict.

Mr. Meadow: I would like to move for the exclusion of witnesses.

The Court: All witnesses are excluded.

The Clerk: All witnesses in the case on trial
347 will remain outside. All witnesses wait in the corridor until they are called inside to testify. All witnesses on both sides go out. The surveyor may remain. The doctor may remain.

HENRY FOX, residing at 2243 Valentine Avenue, Bronx, called as a witness in behalf of the People, being first duly sworn by the clerk, Mr. Jehle, testified as follows:

*Direct examination by Mr. McGough*:

348 Q. What is your name, please? A. Henry Fox.

Q. Did you have a brother named Leon Fox? A. Yes.

Q. When did Leon Fox die, please? A. February 16th in the midnight—I think the 15th at midnight.

Q. What year? A. 1941.

Q. What was your brother's occupation, please? A. Patrolman.

Q. Member of the Police Department of the City of New York? A. Right.

Q. How long had he been a member of the Police Department? A. About thirteen years.

Q. At the time of his death, where was he stationed, if you know? A. Coney Island station.

Q. Some time on Sunday, the 16th of February, 1941, did you see your brother Leon Fox? A. Yes.

Q. At that time was he dead or was he alive? A. Dead.

Q. Where did you see his body? A. In the morgue.

Q. At that time and place did you see the Medical Examiner Dr. Marten? A. I did. 350

Q. Is this the doctor sitting here in court (indicating)? A. Yes.

Q. Did you identify the dead body of Leon Fox, your brother, to Dr. Marten? A. I did.

Mr. Geoghan: No questions.
Mr. Carabba: No questions.
Mr. Solovei: No questions.

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M. EDWARD MARTEN, residing at 152 Lenox Road, Brooklyn, called as a witness in behalf of the People, being first duly sworn by the clerk, Mr. Jehle, testified as follows: 351

*Direct examination by Mr. McGough*:

Q. What is your official position, please? A. I am the Deputy Chief Medical Examiner of the City of New York.

Q. By profession are you a duly licensed, registered medical doctor here in the State of New York? A. Yes, sir.

352 *M. Edward Marten—For People—Direct*

Q. Now, on or about the 16th day of February, 1941, did you perform an autopsy on the body of one Leon Fox? A. I did, yes, sir.

Q. Before you commenced the autopsy did anyone identify the body? A. Yes, sir; the last witness identified it, his brother.

Q. That would be his brother Henry Fox? A. That is correct, yes, sir.

Q. Where was the autopsy performed, please? A. At the county morgue, on the 16th day of
353 February, 1941.

Q. Will you tell this Court and jury what your autopsy revealed? A. The autopsy revealed a male adult about 34. He was a white man and measured five feet eight inches in height. He was rather stockily built and weighed approximately 160 pounds. He had the following wounds on him, caused by a bullet. One was situated in the upper, right anterior chest wall, two and a half inches to the right of the midline and two inches below the suprasternal notch, or two inches below where your collar button is on your shirt, at the top there (indicating)—
354 two and a half to the right and two inches below; which would make a position about where my finger is. The tract of this bullet was traced from before backward and slightly inward, and it was found to egress or come out of the body in the back on the right side, in the posterior chest wall, about 52 inches above the level of the right heel, the level of the third or fourth dorsal vertebra, meaning the little spools of bone that constitute the vertebra—at a level 52 inches above the heel. In its path it passed through the upper lobe of the right lung, causing a very

considerable hemorrhage, there being over two quarts of blood in the right chest cavity. In addition to this bullet there was one in the chest wall almost at the very margin of the ribs (showing), three inches above the navel and four and a half inches to the left of the midline. This passed backward, passing through the chest wall at its margin, and perforated the bowel and the spleen; and was found just to the left of the fourth dorsal vertebra—lumbar vertebra, I should say—from where it was recovered. 356

Those are the only wounds on the man. The cause of death was the gunshot which caused the hemorrhage by perforating the lung. I have the bullet here that I recovered from the abdominal cavity (producing envelope).

Q. Did you examine the bullet, Doctor? A. Yes.

Q. Can you tell us what calibre it is, if you know? A. It appears to be .38 calibre.

Q. Was there any bullet found in connection with the wound that you described as being on the upper or— A. No; that was a through-and-through bullet wound. 357

Q. So that there were three wounds, two of entrance and one of exit; is that correct? A. That is quite correct.

Mr. McGough: I would like to have that bullet marked in evidence, may it please the Court.

Mr. Geoghan: I object that this, from the doctor's testimony, is not the fatal bullet.

The Court: Objection overruled.

Mr. Geoghan: Exception.

358 *M. Edward Marten—For People—Cross*

By the Court:

Q. That bullet you took out of the body of Patrolman Fox? A. Yes.

Q. In the morgue, when you performed the autopsy on him, is that right? A. Yes, sir.

Q. Was the wound a fresh wound, that is, the wound in the patrolman? A. Yes, sir.

Q. Recent wound? A. Yes, sir.

359 The Court: Objection overruled. Mark it.

(Marked People's Exhibit No. 1.)

*Cross-examination by Mr. Geoghan*:

Q. Did I understand you to say that this bullet that was offered in evidence was a bullet that caused the death of Leon Fox? A. I did not say that.

Q. Will you say that it is the bullet that did not cause his death? A. I will not say that either.

360 Q. Neither would you say it caused his death? A. Well, not just yes or no. I mean I cannot answer that without an explanation.

Q. I will take the explanation. A. I believe that that bullet could certainly have caused the death of the individual.

Q. But not Leon Fox? A. Of the man from whom I took it. That could have been the fatal wound. The reason I referred to the bullet No. 1 as being the cause was simply that it was the more likely of the two; that it caused the greatest injury. It does not rule out that this could not

have been a competent producing cause of his death.

Q. And your testimony only goes to the extent that it might have, but not that it did; is that right? A. There were two bullets.

Q. Two bullet wounds? A. Two bullet wounds —two bullets causing injury. I do believe that either one of those wounds was a competent producing cause of death. The reason I referred to the largest wound was simply because there was —I found at least 2500 cubic centimeters of blood 362
in the chest.

Q. That was wound No. 1? A. Wound No. 1 in terms for description's sake only; that is, this is a very large quantity of lost blood.

Q. That in your opinion, as I understand, is what caused the death of Leon Fox? A. That certainly was a competent producing cause of death, yes, sir.

Q. But you do not produce the bullet that caused that wound, is that correct? A. Yes, sir. That passed out. So that is correct, I have not that bullet.

363

Mr. Geoghan: I still press my objection.
The Court: Objection overruled.
Mr. Geoghan: Exception.

*Cross-examination by Mr. Meadow*:

Q. Can you tell us how many inches from the lower portion of the body the wound in the back of the deceased was? A. That question does not mean anything to me. It is not clear to me.

Q. Give us the exact location—

The Court: What is the purpose of this cross-examination?

Mr. Meadow: I want to show—

The Court: What is the purpose of it?

Mr. Meadow: I want to show how the bullet traveled, the one that went through the chest cavity. I want to show how that bullet traveled, and that is all. I have something in mind, your Honor.

The Court: All right.

365 A. You refer to the lower part of the body. I don't know what that means.

Q. Just tell us where the bullet that went through the abdomen came out through the back? A. It did not come out through the back.

Q. Doctor, did you testify on direct examination that a bullet went through the abdomen and went completely through the body? A. I did not. You did not listen.

Q. I did not hear. I was listening. Will you tell us what happened to the bullet that went into the abdomen. Is that the bullet that you took
366 out of the body? A. That is correct; yes, sir.

By the Court:

Q. That is the one that ripped— A. The bowel and the spleen.

Q. Ripped his bowel and ripped his spleen? A. That is correct.

Mr. Meadow: I did not hear.

By Mr. Meadow:

Q. Then will you tell us where the other bullet

came out of the body in the back? A. 52—may I refer to my notes? I will give you a very accurate location. I think it was 52½ inches above the right heel, and about one and a half inches to the right of the midline. I will check against that right here (referring to paper). In other words, I stated that bullet labeled No. 1, as having gone into the chest at a point that was two and a half inches to the right of the midline and two and a half inches below where your collar-button is. That is the way I referred to it. 368
That would be the position here (indicating).

Q. That bullet stayed in the body? A. No; it did not. Do you want me to finish this, or to put another question?

Q. Yes. A. Shall I finish this?

Q. Yes; just tell us where the bullet came out? A. That was the entrance wound I just gave you. The tract of this, referring to No. 1, was from before backward, almost horizontal. In its course it entered the chest wall at the second interspace, meaning the space between the second and third rib—perforated the upper lobe of the right lung, and emerged from the space 369
between the second and third ribs posteriorly—that is, in the back—making its exit from the chest wall at a point indicated as being 52 and one-half inches above the level of the right heel.

370 *Anthony O. DeSario—For People—Direct*

ANTHONY O. DESARIO, residing at 1860 52nd Street, Brooklyn, called as a witness in behalf of the People, being first duly sworn by the clerk, Mr. Jehle, testified as follows:

The Court: Have you gentlemen examined this map or diagram?

Mr. Geoghan: We have a copy of it.

The Court: Have you looked at it?

Mr. Carabba: Yes; we have.

371 Mr. McGough: I would like to have the record note that I have furnished counsel with a copy of the diagram.

Mr. Geoghan: I just made that statement.

The Court: Is the map all right?

Mr. Carabba: We understand it is a copy. We appreciate having a copy.

*Direct examination by Mr. McGough:*

Q. Mr. DeSario, you are an engineer connected with the Police Department of the City of New
372 York? A. I am.

Q. At my request did you make a survey or diagram of the streets at Surf Avenue and West 12th Street here in the Borough of Brooklyn, County of Kings? A. I did.

Q. Did you bring the survey or blueprint with you here today? A. I did.

Q. Is this the blueprint, please (showing)? A. It is.

Mr. McGough: May I offer it in evidence at this time.

Mr. Geoghan: No objection for Indovino.

Mr. Carabba: No objection on behalf of Rudish.

The Court: There is no objection, I take it, from any of the counsel. The exhibit will be marked People's Exhibit 2.

(So marked.)

By Mr. McGough:

Q. Now, Mr. DeSario, to help us out, please, 374
will you take a pointer and explain the survey now marked People's Exhibit 2. Explain the survey, please. A. We have a plan showing Surf Avenue from West 15th Street to West 12th Street, north to Neptune Avenue. This is a location plan showing the location of various buildings on Surf Avenue between West 15th Street and West 12th Street.

The Court: May I, for the sake of clarity, Mr. District Attorney, ask a question or two, so that we can get this location firmly fixed in our minds? 375

Mr. McGough: Yes.

The Court: I suppose everybody knows Surf Avenue in Coney Island.

By the Court:

Q. When you are coming down through Ocean Parkway, entering Surf Avenue, going towards Sea Gate, going towards Sea Gate, the street to the right of Surf Avenue would be Neptune Avenue, is that correct? A. That is correct.

376 *Anthony O. DeSario—For People—Direct*

Q. That is Mermaid Avenue that intersects there at Stillwell Avenue? A. Yes.

Q. And is also a parallel street to Surf Avenue? A. Yes.

Q. To the left would be the boardwalk and the ocean? A. That is correct.

Q. Give us the points of the compass as we are traveling towards Sea Gate. Which way would you be going? A. West.

Q. If we turned in the opposite direction and
377 went towards Eastern Parkway, which way would we be going? A. Going east.

Q. Towards Neptune Avenue is north? A. That is north.

Q. Towards the ocean is south? A. South.

The Court: All right.

By Mr. McGough:

Q. Now, on your left you indicated the location of all those streets that you mentioned. Right? A. That is correct.

378 Q. And will you tell us, please, describe what is on the right side of the survey? What intersection is that? A. That is a plan of Surf Avenue and West 12th Street, showing the four corners, the street lights, trolley poles, traffic signals, fire hydrants, and on the other side street lights, trolley poles, hydrants, mail box, and the dimensions of the street, and shows the trolley tracks running along Surf Avenue. On the southeast corner we see a building of the Brooklyn Trust Company. That is the only building we have marked. This plan is drawn to a scale of one inch equals ten feet.

Q. Will you show, please, on the location plan, exactly where the intersection would be? A. Surf Avenue and 12th Street on the location plan—and West 12th Street, rather, here, right here (indicating).

Q. What is the scale of this survey? A. The scale of the location plan is one inch equals fifty feet; that is, this large plan.

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380

HERMAN M. DOLINSKY, residing at 845 Prospect Place, Brooklyn, called as a witness in behalf of the People, being first duly sworn by the clerk, Mr. Jehle, testified as follows:

*Direct examination by Mr. McGough*:

Q. What is your occupation, Mr. Dolinsky, please? A. Manager for Loew's theater.

Q. On February 15, 1941, what theater were you connected with? A. Loew's Coney Island Theater.

381

Q. Where is it located, please? A. That is at 1301 Surf Avenue.

Q. Would that be on the corner of Stillwell and Surf Avenue? A. Surf and Stillwell on the corner.

Q. Borough of Brooklyn, County of Kings? A. Yes.

Q. How long have you been with the Loew's theater? A. Over thirty years.

Q. Do you recall the night of Saturday the 15th day of February, 1941? A. I do.

Q. Where were you at about the hour of about eleven at night? A. On my way to the bank.

382 *Herman M. Dolinsky—For People—Direct*

Q. Were you accompanied by anybody? A. Officer Leon Fox.

Q. How long had you known Fox before that? A. I should judge about six years.

Q. What bank, please, were you on your way to? A. Brooklyn Trust.

Q. Where is that located? A. That is on 12th Street and Surf.

Q. Before leaving the theater to go to the bank did you have occasion to make up any money?

383 A. I did.

Q. Please tell us what if anything you did at the theater in that respect? A. Put it into the burlap bag, seven hundred dollars in bills and seven rolls of quarters, ten dollars each.

Q. When you went to the bank did you have that money with you? A. I did.

Q. Tell the Court and jury, Mr. Dolinsky, please, what route you took when you left the theater to go to the bank? A. In leaving the theater, that is, from 14th Street towards 12th, the officer was on my right side, or the curb side.

384 By the Court:

Q. Was he in uniform? A. In uniform. I was towards the building end. We were walking on the surf side, that is towards 12th Street.

By Mr. McGough:

Q. When you say surf side, you mean the water side or Surf Avenue? A. Surf Avenue.

Q. On which side, north or south?

By the Court:

Q. On the side where the ocean is or on the side where Neptune Avenue is? A. Where Neptune is.

By Mr. McGough:

Q. That would be the north side? A. That would be the north side, the north side. We walked as far as 12th Street, then we turned across here—what would you call it?—catercornered—towards 12th. On crossing I observed a car about what we would call about second parking. There was one door open on the car. 386

Q. Do you mean the auto was away from the curb? A. Away from the curb, yes. It was facing Surf Avenue away from what we call the boardwalk. One door was open. The lights were out on the car, and as we passed a man leapt out of the car, brushed me so I fell forward—that gave me a running position—and leapt at the cop.

Q. Did you see or hear anything at that moment? A. I did. 387

Q. Tell us, please? A. Three shots I heard; I heard three shots.

Q. Did you at that moment see the officer? A. In turning back I seen the officer fall.

Q. Did you hear any voices at that time? A. Just inarticulate, some grumbling sound from the man that done the firing.

Q. Was anything said to you immediately thereafter? A. Yes; as I was running I was ordered to drop the bag or I would be dropped.

Q. Tell us the words you heard. A. "Drop the bag or I will drop you."

388 *Herman M. Dolinsky—For People—Direct*

Mr. Solovei: I object to this line of testimony on the ground it is not binding on the defendant Malinski

The Court: At this time you cannot tell.

Mr. Solovei: However, my objection I press and I ask for a ruling.

The Court: Objection overruled.

Mr. Solovei: Exception.

The Court: I do not hold it is binding, but we have to take the testimony in se-

389 quence.

Mr. Meadow: The defendant Rudish joins in that objection.

The Court: I will take the testimony subject to a motion to strike out in the event it is not connected with each of these defendants, or with the defendant in question. You gentlemen will bear in mind to make such a motion. In the event that you do not make a motion the Court will conclude that you do not desire to make the motion. Proceed.

390 By Mr. McGough:

Q. You were up to the point where you said you heard a certain expression, is that right? A. Yes.

Q. What did you see or hear from that point on, please. Tell us what happened. A. Well, as I threw the bag—I threw the bag and the fellow bent over and raised the bag, leaped in the car and made his getaway.

Mr. Solovei: I object on the same

ground and I move to strike the answer out.

The Court: Same ruling.

Mr. Solovei: Exception.

By Mr. McGough:

Q. Now, please, did you have a look at that man's face? A. I could not distinguish it.

Q. Did you see if any persons were in the car? A. Could not distinguish it. 392

Q. Can you tell us about how tall and what weight the man that picked the bag up was?

Mr. Solovei: I object on the ground the witness said he could not see.

The Court: Objection overruled.

Mr. Solovei: Exception.

A. Possibly five foot four, five foot five.

Mr. Solovei: I move to strike the answer out on the ground it is speculative and guessing. 393

By the Court:

Q. Are you giving us your best recollection, sir? A. Best recollection.

The Court: Objection overruled.

Mr. Solovei: Exception.

By Mr. McGough:

Q. About how heavy, if you know—your best

approximation? A. I should judge about medium weight.

Q. You say the car moved away? A. Yes.

Q. In what direction did you see the car go? A. Over Surf Avenue right as you would say going north over Surf Avenue.

Q. That would be across the trolley tracks? A. Across the tracks, yes.

Q. And down in the direction of Neptune Avenue? A. Towards that direction, right.

395 Q. Is that right? A. Over the tracks.

Q. Towards Coney Island Creek? A. Right.

Q. Now, while that was being done, the car going away, did you see Fox? A. On his back.

Q. What if anything did you see him doing? A. He blazed away with his gun.

Q. When you say he blazed away, what did you see him do? A. Fired the shots.

Q. How many shots, if you know? A. Approximately six.

Q. Did you go over to the patrolman? A. I did.

Q. Where was he at that time? A. On his back.

396 Q. Where? A. Near that fire hydrant and the exit to that store—the store is empty now—what you call it—the bank is owner of the stores there near the fire hydrant.

Q. Were you there when the police officers arrived? A. I was.

Q. Did they arrive on foot or by radio patrol? A. By radio car.

Q. Did you see what if anything they did to Fox? A. They raised him into the car, lifted him.

Q. What did you see them do then? A. Off to the hospital—they left the premises.

Q. They drove away, you mean? A. Drove away.

Q. Now, Mr. Dolinsky, did you see that car again some time after that particular occurrence? A. I did.

Q. How much later, please, and where did you see it? A. Possibly an hour later, or earlier than that. It was on Stillwell Avenue, about a block and a half or two blocks away from Surf 398 Avenue.

Q. Between what blocks? A. Is it Mermaid Street in back of Surf?

Q. Would you care to turn around and look at People's Exhibit 2; perhaps it might assist you. A. There was a shanty, an old wooden building where the car was in front of.

By the Court:

Q. Between Mermaid and Neptune? A. Somewheres about here (indicating).

399

The Court: Indicating about the center of the block between Mermaid and Neptune Avenue on Stillwell Avenue.

By Mr. McGough:

Q. Do you see a number 2824 on the survey? A. I think so.

Q. Was it about there? A. About there, I should judge, somewheres around there.

Q. While you are on your feet, please, and you have the pointer in your hand, can you

400 indicate on that survey, please, as to about where you were when the man came out of the car and brushed you one way and then fired the shots at the policeman. I suggest you take the bigger diagram. A. There is West 12th Street—here it is (indicating).

The Court: That is near the Bowery, isn't it?

401 By Mr. McGough:

Q. Where is Surf Avenue? A. This is Surf. This is the route we took, on Surf Avenue here, catercornered here, and this is where I saw the car parked, about here where I have got my pointer.

Q. Will you take this white crayon, please, and mark a rectangular box to indicate the car where you first saw it, where you say the door was open and the lights were out? A. The car was about—

Q. Make it heavy. A. All right, I will make it
402 heavy—about here (marking).

Q. Will you make that a full rectangle, make it a little heavier. That is the car? A. That is the car (marking).

Q. Will you indicate with an "X", please, on the sidewalk where you say someone pushed you and did something to Fox? A. I will say about here (indicating).

By the Court:

Q. Were you in the gutter or on the sidewalk? A. On the sidewalk.

The Court: Mark it on the sidewalk.

A. On the sidewalk, I was about here where I make an "X" (marking). The officer was on this side, towards the curb. That is the officer, and that is me; the small "X", that is myself—the officer was on the inside.

By Mr. McGough:

Q. Will you make a big "X" and put "L.F." by it, indicating where the policeman was? A. Yes (marks). 404

The Court: Make a big "X".

A. (Continued) Puts "L.F.", and the small one for myself.

Q. Will you take a crayon, please, and with a sweep of your hand mark a real white line right from the bank from the north side of Surf Avenue, showing how you crossed over?

By the Court: 405

Q. Is this the theater (indicating)? A. Yes.

The Court: Suppose we mark it "T".

A. Mark it "T".

Q. With a circle around it? A. Yes.

Q. That is on the corner? A. Corner of Surf and Stillwell.

Q. How did you go from the theater along Surf Avenue? A. Right; and catercornered, this way.

Q. Then down the street.

406 *Herman M. Dolinsky—For People—Direct*

Mr. McGough: May I suggest it be made a little heavier, please?

(The Court marks out with red crayon, at the direction of the witness, the route which the witness says he took).

By Mr. McGough:

Q. Will you describe that car, please? What color? What it looked like if you know? A. The car was of a bluish color, with a cloth top.

407 Q. I show you this photograph, Mr. Dolinsky, and ask you if that correctly represents how you saw the car when you saw it again that night on Stillwell Avenue between Neptune and Mermaid? A. That is the car.

Q. Is that just the way it was at the curb when you first saw it? A. It was.

Mr. McGough: I offer that in evidence.

By the Court:

408 Q. You mean that is the car in the left foreground? A. Yes.

Q. There is a police car there, too. That is not the car you have reference to? A. No; I refer to this car (indicating).

Q. There is a car here with a license plate No. 6—Q—5923. Is that the car you have in mind? A. This is the car I have in mind.

The Court: Show it to counsel.

Mr. Geoghan: I have no objection to the admission of that picture in evidence, except that it be received simply as a

picture of a car found at the spot where it was found; but not that it is the car that was used in this particular holdup.

The Court: The witness says it is.

Mr. Geoghan: That is subject to cross-examination. I have already made that objection.

The Court: Want to cross-examine him on the voir dire?

Mr. Geoghan: When he is finished— 410
no, no—when he is finished.

The Court: As to the admissibility of the picture?

Mr. Geoghan: Yes; I would.

The Court: If you wish, you have the opportunity—you have the right before I pass on its admissibility.

By Mr. Geoghan:

Q. Mr. Dolinsky, how far was this car from you when you first saw a man jump out of it near the Brooklyn Trust Company? A. How 411
far?

Q. Yes. A. The car where the man leapt?

Q. Yes. A. About three feet away.

Q. Three feet away from where you were? A. From where I stood, where I walked; yes.

Q. Were you in the street or on the sidewalk? A. I was on the curb side of the sidewalk.

Q. Right at the curb or between the curb and the wall—that is, the building? A. No; towards the curb.

Q. Right at the curb? A. Closer to the curb, yes.

412 *Herman M. Dolinsky—For People—Cross (Voir Dire)*

Q. It was at that moment you saw a man jump out of a car? A. Yes.

Q. You saw him jump out? A. He leaped. He brushed me so I almost fell over on my face.

Q. You were watching him, weren't you? A. Watching him?

Q. You were looking at him, weren't you? A. When he leaped, I more than looked; I almost fell over on my face.

413 Q. Exactly; so you had your eyes on him, didn't you? A. I did not know what hit me.

Q. I say, did you have your eyes on him at the moment when you saw him leap from the car? Yes or no. A. No.

Q. Where were your eyes? A. I almost fell over.

Q. You mean you did not see anything? A. I did. I saw the man leap.

Q. When you say you almost fell over, what do you indicate by that? A. He jumped hit me and leaped at the cop.

414 Q. That happened very quickly? A. As quick as a flash.

Q. Maybe a second or so? A. Maybe a second or two seconds.

Q. At that moment was it that he fired the shots? A. At the cop.

Q. Yes; just as soon as he pushed you aside; is that right? A. Yes.

Q. Is that right? A. He jumped at the cop, let him have it.

Q. That is right after he almost pushed you over? A. Right after he almost pushed me over, right.

*Herman M. Dolinsky—For People—Cross (Voir Dire)*

Q. Then you heard these three shots; is that right? A. Yes.

Q. Did you look in the direction where he fired the shots? A. In running, I looked over my shoulder and I seen him fire the shots.

Q. Who were you watching—Fox—that is, the police officer? A. In looking back I saw the two.

Q. Both of them? A. Both of them; right.

Q. You were a little frightened at that time, of course—scared? A. I was not little.

Q. You were scared, weren't you? A. Naturally.

Q. That is quite all right. Then the man that you say fired these shots jumped back in the car? A. No; he commanded me to drop the bag.

Q. You dropped the bag first? A. Threw it at him; yes.

Q. How far away from him were you when you threw the bag? A. Possibly thirty or forty feet.

Q. He grabbed the bag and jumped in the car? A. He grabbed the bag and jumped in the car.

Q. How long did all this take from the time he got out of that car until he leaped back into it with your bag? A. Seconds.

Q. Just seconds? Then they were off? A. Like a flash.

Q. That was eleven o'clock at night? A. Eleven o'clock at night.

Q. Before or after eleven o'clock? A. I say eleven. I could not be sure.

Q. Did not notice the license plates on the car? A. Too dark.

Q. How long after that was it that you saw the automobile represented in this picture now offered in evidence? A. Possibly within an hour.

418 *Herman M. Dolinsky—For People—Cross*
*(Voir Dire)*

Q. You picked that out as the same automobile that you saw in the few seconds that had elapsed? A. Yes.

Mr. Geoghan: I object to it.
The Court: Objection overruled.
Mr. Geoghan: Exception.
Mr. Meadow: I make the same objection.
419 The Court: Overruled.
Mr. Meadow: Exception.
Mr. Solovei: May I just ask one question before your Honor will permit this picture in evidence—in behalf of the defendant Malinski?
The Court: Certainly.

By Mr. Solovei:

Q. While you were walking with Fox on the sidewalk on Surf Avenue after you left the theater, you paid no attention to any cars parked
420 on the street at all, did you, Mr. Dolinsky? A. I kept walking towards the bank.

Q. Nothing unusual for you to see parked cars on Surf Avenue, was it? A. Practically nothing unusual.

Q. The cars that you saw in a double row, that was nothing unusual, was it? A. Not in double row. I said, "second parking". There was no car around there but this car—second parking, what we call—in the middle of the gutter.

Q. When you walked along the avenue with Detective Fox, you paid no attention to cars on Surf Avenue, did you? A. On Surf Avenue?

Q. Yes. A. There were no cars on Surf Avenue—that particular night I mean there were no cars on Surf Avenue.

Q. No cars at all? A. Not as far as I can recall, no cars on Surf Avenue.

Q. You mean not a car parked on Surf Avenue —avenue— A. I seen no cars parked on Surf Avenue.

By the Court: 422

Q. This was in February? A. Yes; bitter, cold night.

By Mr. Solovei:

Q. This Loew's Theater is on what street? A. Surf Avenue and 14th Street.

Q. You were walking on Surf Avenue, from Loew's Theater to the bank, is that correct? A. Correct.

Q. You were walking towards 15th Street? A. Towards 12th Street. 423

Q. That is the Brooklyn Trust Company? A. Correct.

Q. And while you were walking along Surf Avenue you were in conversation with the officer Fox, is that correct? A. I was, yes.

Q. You had no reason to look for any car on Surf Avenue or anywhere else, is that right? A. The only thing I observed was that car in the middle of the gutter with a door open, facing Surf Avenue; that is the only thing caught my eye; but I saw nobody.

Q. You were observing the car on Surf Avenue

424 *Herman M. Dolinsky—For People—Cross (Voir Dire)*

with the door open, is that correct? A. On 12th Street, facing Surf Avenue.

Q. And you just took a fleeting glance at the car and kept on walking? A. Call it fleeting, yes; but I observed it.

Q. That glance was just for about a second, is that what you say? A. Plenty—a second—I could see a whole lot in a second.

Q. Did you notice what make the car was at
425 that time? A. As far as I recall a Ford; I cannot exactly say.

Q. You are not sure just what make it was? A. No.

Q. Could have been a Chevrolet and it could have been a Pontiac, it could have been a Ford, is that correct? A. Most likely a Ford.

Q. But it could have been a Chevrolet, too, couldn't it? A. Could have, yes.

Q. In other words, what you saw on Stillwell Avenue about an hour after this alleged crime was committed, or Fox was shot, was you saw a
426 car on Stillwell Avenue which was parked with the lights out, that looked very much like the car that you saw on 12th Street with the door open; is that correct? A. The car that I saw was the car that I saw on 12th Street.

Q. There was no particular identifying marks on this car that you saw on 12th Street, were there? A. There was—what you call it—a cloth top, a bluish color.

Q. You have seen a great many cars like it, haven't you? A. In my life, I did; yes.

Q. This car that you saw on 12th Street, with the door open, there was nothing unusual about this car that you have seen time and time again

in the city streets of the City of New York, is that correct? A. In one hour I can remember the same car.

Q. But I say, you have seen a great many cars actually like this in the city streets, in the City of New York? A. There are plenty of them in the streets, yes.

Q. And the reason why your identification is re-enforced, that you believe you saw this car, is because of the fact you found an abandoned car an hour after the alleged commission of this 428
crime, isn't that so? A. No; that was the car.

The Court: All right, mark it in evidence.

Mr. Solovei: I object to it.

The Court: Objection overruled; exception to the defendants. Of course, its weight and credibility are for the jury.

(Received in evidence and marked People's Exhibit No. 3.)

By Mr. McGough: 429

Q. I show you this photograph and ask you if it correctly represents the corner that you speak of here, West 12th Street and Surf Avenue, looking in a southerly direction, towards the water, as it was on the 15th of February, 1941 (showing). A. That is right.

Mr. McGough: I offer that photograph in evidence.

Mr. Geoghan: When were they taken?

Mr. McGough: They were taken the day after.

The Court: Show it to counsel, please.

(Picture shown to counsel.)

Mr. Geoghan: With respect to this, if the District Attorney will concede that it is not offered for the purpose of showing the condition of the streets, shown in this photograph, at or about 11 o'clock on February 15th, 1941, but that it is simply a
431 picture of those streets; I have no objection.

Mr. McGough: I will concede that it was taken the next day, your Honor.

The Court: In other words, there are some automobiles shown on that photograph.

Mr. Geoghan: That is the reason I make the point.

The Court: These automobiles on the photograph have nothing to do with the case. It is merely to give the jury an idea of what the streets look like?

432 Mr. McGough: Yes.

Mr. Geoghan: That is all I wanted.

The Court: That is clear.

(Photograph received in evidence and marked People's Exhibit No. 4.)

Q. I will now show you this photograph and ask you if that is a correct representation of 12th Street, looking north, as it was on the 15th or 16th of February, 1941, and does it show the

avenue that you testified about? A. That is correct.

Mr. McGough: I offer that photograph in evidence.

Mr. Geoghan: With the same concession by the District Attorney, no objection.

Mr. McGough: That is understood.

The Court: Mark it.

434

(Received in evidence and marked People's Exhibit No. 5.)

Q. Was it up that particular block that you say you saw this car go? A. Yes.

Q. I have one further question. Will you turn around, please, and indicate with your finger where the night depository would be on that survey? A. (Pointing).

Q. Right where you are indicating now? A. Yes.

Q. That is where you would deposit any sums you wanted to? A. Correct. 435

Mr. Geoghan: No questions on the part of Indovino.

By Mr. Solovei:

Q. Were you wearing your glasses on the night of February 15th? A. Yes.

Q. You have bad eyes? A. I would not call them bad.

Q. I just noticed you removed the glasses when you looked at the map. Can you see better

436 *Herman M. Dolinsky—For People—Cross*

without them? A. I did not remove them. I may have pushed them, because they slip. I did not remove them.

The Court: What is the purpose of the cross-examination?

Mr. Solovei: I don't know, if your Honor insists upon our making an explanation of the purposes of cross-examination.

437 The Court: I just want to be clear. I am not going to limit you at all, Mr. Solovei; but this man has not identified anybody. What is the purpose of the cross-examination?

Mr. Solovei: I did not ask about any identification.

The Court: All right; proceed.

By Mr. Solovei:

Q. Did you have your glasses on when you walked down Surf Avenue? A. I did.

438 Q. With Officer Fox? A. Correct.

Q. Could you see better with your glasses or without your glasses? A. Better with my glasses.

Q. Far sighted or near sighted, do you know? A. Far sighted.

Q. When this man that you talk about leaped out of the car and you were stunned—is that correct? A. Pushed.

Q. Fell. A. Almost fell,—gave me—I could run.

Q. The entire thing, as you said in answer to Mr. Geoghan's questions, took about a second,

the jumping out of the car, the shooting of the police officer, and the returning back to the car; is that correct? A. I did not say a second.

Q. You said about a second or two? A. A couple of seconds; yes.

Q. Immediately when you turned around you saw that the Officer Fox was shot? A. I did not turn around; I looked over my shoulder.

Q. You walked towards where he was, didn't you? A. After they were gone?

Q. Did you walk where Fox was after you 440
heard the shots? A. Oh, no; when they drove away I first made for the officer.

Q. The man jumped back in the car; is that correct? A. After lifting the bag.

Q. Jumped back in the car? A. Correct.

Q. And drove away? A. And drove away.

Q. They drove in some opposite direction, didn't they? Away from the boardwalk.

Q. Away from where you were? A. Correct.

Q. And you were then trying to help Fox? A. I ran to Fox immediately; right.

Q. Prior to these men jumping out of the 441
car— A. I said "the man" not "the men".

Q. A man? A. Yes.

Q. That man you never saw again? A. (No answer.)

Q. I say, you never saw that man in your life again, did you? A. I did not; no.

Mr. Geoghan: No questions.

Mr. Carabba: No questions.

By Mr. Solovei:

Q. You cannot tell who he is? A. I cannot.

442 *Max Kallman—For People—Direct*

MAX KALLMAN, residing at 1565 East 18th Street, Brooklyn, N. Y., called as a witness in behalf of the People, being first duly sworn by the clerk, Mr. Jehle, testified as follows:

*Direct examination by Mr. McGough:*

Q. By whom are you employed? A. By the Colgate-Palmolive-Peet Company.

Q. How long have you been employed by that company? A. Nine years.

443

Q. In what capacity? A. Salesman.

Q. Do you recall where you were at about the hour of 11 p. m. on Saturday, the 15th of February, 1941? A. I do.

Q. Where, please? A. I was parked for a red light on the corner of Surf Avenue and West 12th Street, Coney Island.

Q. Were you driving your car? A. Yes.

Q. Did you have anybody with you? A. Yes, sir.

Q. Who? A. My wife.

Q. Where were you proceeding at the time you

444

stopped for the red light at that intersection? A. We were going over to Nathan's for a hot dog and some beer.

Q. Going towards Sea Gate? A. Yes.

Q. Where were you coming from? A. I was coming from the Nostrand Theater, Kings Highway and Nostrand Avenue. That is a moving picture theater.

Q. When you stopped for the red light on Surf Avenue and West 12th Street, did anything attract your attention? A. Yes.

Q. Tell us, please, what you saw what you

heard? A. I heard two shots—got out of my car—stepped into the gutter, heard some more shooting, and then saw a car fly across the avenue in the direction Neptune Avenue.

Q. What, if anything, did you do? A. I immediately got into my car, knowing that there would—

Mr. Geoghan: I object.

Q. Just tell us what you did? A. I got into my car and looked for an officer. 446

Q. Did you find one? A. Yes, sir.

Q. Where? A. On Surf Avenue right near the theater.

Q. Which theater was that? A. That is the Loew Theater.

Q. That was how far from West 12th Street? A. That is just one block away.

Q. Without telling us what was said, did you say anything to that officer or officers? A. Yes.

Q. Was he on foot or in a patrol car? A. It was a radio car.

Q. How many officers were there? A. Two. 447

Q. See them here in court today? A. I saw them in court yesterday.

Q. After you had a talk with them, did you see them do anything? A. Yes.

Q. What, please? A. They turned around immediately and proceeded where I heard the shooting.

Q. That was at West 12th and Surf? A. Yes.

Q. What did you do? A. I followed right in back of them in my car.

Q. Did you stop at West 12th and Surf? A. Yes.

448 *Max Kallman—For People—Direct*

Q. Did you see anything there at all? A. Yes, sir.

Q. Tell us, please, what you saw? A. I saw them picking the officer up and putting him into the radio car.

Q. When you say an officer, you mean a patrolman in uniform? A. Yes, sir.

(At this time two policemen were brought into the room.)

449

Q. Is this the patrolman, and is this the Sergeant, please, that you saw? A. Yes.

Mr. McGough: Identify yourselves for the record.

The Patrolman: Patrolman James P. Rabbitt, shield No. 12554, 60th Precinct.

The Lieutenant: Acting Lieutenant George A. Bremeier, shield No. 955 Air Warden Service.

(The two officers thereupon left the room.)

450

Q. They are the two officers that you first saw and spoke to after you heard the shots at West 12th and Surf Avenue on that night? A. Yes, sir.

Q. Did you see any fire or any flashes while you were out of your car on the pavement? A. Yes, sir.

Q. How many flashes did you see? A. At least two.

Q. Can you tell us, please, in what direction you saw these flashes? Where did they come

from? A. They were coming from the bank side of West 12th Street.

Q. Were you able to see any persons or figures at that particular point? A. No, sir.

Q. When that car passed by were you able to see how many persons were in the car? A. No, sir.

Q. Did you see that car again after it drove off, as you testified? A. Yes, sir.

Q. When and where did you see it? A. On Stillwell Avenue between Mermaid and Neptune. 452

Q. Did anybody bring you there to have you look at the car? A. Yes, sir.

Q. Who? A. The police officer.

Q. When you went back first to West 12th Street and Surf Avenue, did some one obtain your name and address? A. Yes, sir.

Q. Do you know who that somebody was? A. It was some officer who told me to wait.

Q. What color car was it, please? Can you describe it for me? A. Yes, sir. It was a blue car with a cloth top.

Q. Can you tell us whether the lights were on the car or whether they were turned off? A. 453 Off.

Q. I show you People's Exhibit marked 3 in evidence, and ask you, please, if that is the car that you say you saw that night? A. Yes, sir; that is the car.

Q. When did you first see that car again, please? A. Going across the avenue.

Q. At what avenue? A. Surf Avenue.

Q. What street? A. West 12th Street.

Q. When again, did you see the car for the second time that night? A. Parked on Stillwell Avenue.

454 *James P. Rabbitt—For People—Direct*

Q. Do you have any family? A. Yes, sir; little girl.

Q. How old? A. She is sixteen months old.

Q. Where is your wife? A. My wife is ill, and she has been occupied taking care of this baby, who has been under medical attention.

Mr. Geoghan: No questions on the part of Indovino.

Mr. Carabba: No questions on the part
455 of Rudish.

Mr. Solovei: No questions.

Mr. Morritt: No questions.

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JAMES P. RABBITT, shield No. 12554, 60th Precinct, called as a witness in behalf of the People, being first duly sworn, by the clerk, Mr. Jehle, testified as follows:

*Direct examination by Mr. McGough:*

456 Q. How long have you been a member of the Police Department, Officer? A. Over eighteen years.

Q. Do you recall how you were working on the night of Saturday, February 15th, 1941? A. I do.

Q. What tour did you have? A. I was working four to twelve tour, operating a radio motor patrol, driving Sergeant Bremeier.

Q. Did you at or about the hour of 11 o'clock that night, see Mr. Max Kallman, the witness who was just on the stand? A. I did.

Q. Where did you see him for the first time?

A. He pulled up alongside of me on Surf Avenue in front of the Cosmos Restaurant.

Q. With reference to the Coney Island Theater, where was the Cosmos Restaurant? A. It was really between the Cosmos Restaurant and the Coney Island Theater.

Q. Right adjacent? Right? A. Yes.

Q. Were you in a radio patrol car? A. Yes.

Q. In which direction were you facing? A. Facing west on Surf Avenue.

Q. Would that be towards Sea Gate? A. Towards Sea Gate. 458

Q. Without telling us the conversation had, did Kallman say something to you and Bremeier? A. He did.

Q. As a result of that talk, did you do something? A. I did.

Q. Tell us what you did? A. I made a U turn and proceeded east on Surf Avenue to West 12th Street and Surf Avenue.

Q. Did you stop your car there? A. I stopped the car and observed Patrolman Fox lying on the sidewalk.

Q. You knew Fox before that night, of course? 459
A. I did.

Q. You worked in the same precinct with him, did you? A. Yes.

Q. Now, please, can you describe how Fox was lying when you first observed him? A. He was lying with his head towards the bank wall, right outside Dr. Bluestone's entrance to Dr. Bluestone's office.

Q. Did you do anything for Fox? A. We picked Fox up, Lieutenant Bremeier and myself, and placed him in my auto, the Department auto, and drove him to the hospital.

460 *James P. Rabbitt—For People—Direct*

Q. Which hospital? A. The Coney Island Hospital.

Q. I show you this photograph, Officer Rabbitt, and ask you does that correctly represent the spot where you say Officer Fox was lying on the pavement near Dr. Bluestone's entrance? A. That is right; that is the location.

Mr. McGough: May I offer that photograph in evidence?

Mr. Geoghan: No objection.

461 Mr. Solovei: No objection.

(Received in evidence and marked People's Exhibit No. 6.)

Q. Will you take this exhibit marked 6 in evidence, please, and indicate with an "X" on the face on the photograph where the body of Patrolman Fox was when you first observed it? A. (Witness marks).

Q. May I also ask you to mark "L.F.", so we will know what that is. A. (Witness marks).

462 Q. Was Fox conscious at the time you first arrived there? A. He was not.

Q. Were you able to talk to him? A. No; he was not able to talk. He was gurgling blood. We had no conversation; he was gurgling blood.

Q. So far as you know were you the first peace officer on the scene? A. I was.

Mr. Geoghan: No questions on behalf of Indovino.

Mr. Solovei: No questions.

Mr. Meadow: No questions.

LIEUTENANT GEORGE A. BREMEIER, Acting Lieutenant, shield No. 955, assigned to the Air Warden Service of the Police Department, called as a witness in behalf of the People, being first duly sworn by the clerk, Mr. Jehle, testified as follows:

*Direct examination by Mr. McGough:*

Q. Lieutenant, do you recall Saturday night, February 15, 1941, when Patrolman Leon Fox was shot? A. I do. 464

Q. Did you see the witness Max Kallman, who was here, at any time that night? A. Max Kallman?

Q. Kallman. A. Yes.

Q. Where did you first see him, please? A. I saw him outside of Loew's Theater Building; that is Surf and Stillwell Avenues.

Q. Where you on radio motor patrol then? A. I was.

Q. Were you with your brother officer Rabbitt? A. I was.

Q. Did you talk to Kallman? A. Yes. 465

Q. After the talk with Kallman did you do anything? A. I did.

Q. Tell us what you did and what you observed when you got there? A. I was about three steps away from the radio car, and Patrolman Rabbitt called me back and informed me that Mr. Kallman had informed him that he heard some shots.

Mr. Geoghan: I object to that.

Q. Don't give us any hearsay, Lieutenant.

466 After Kallman spoke to you did you do something? A. Yes.

Q. Tell us. A. We immediately proceeded in the radio car to make a radio turn, proceeded towards 12th Street and Surf Avenue.

Q. Did you see Patrolman Fox at that spot? A. I did. He was on 12th Street.

Q. Describe the position he was in at that time? A. He was lying on the ground on his back, and the gun was alongside of him, his re-
467 volver, we immediately proceeded—I then asked Patrolman Fox what had happened—he was unable to talk at the time. So I the informed Patrolman Rabbitt that we both—

Mr. Geoghan: I object to what he informed.

The Court: What difference does it make?

Mr. Geoghan: I know it does not make any difference but it is part of the record.

The Court: If you have a serious objection, I will sustain it.

468

A. We lifted Patrolman Fox into the radio car and I directed Patrolman Rabbitt that he should take him down to the Coney Island Hospital.

Q. When you saw him was he lying in the gutter or on the sidewalk? A. He was lying on the sidewalk.

Q. Did you see any detectives there shortly thereafter? A. I did.

Q. Did you see Detective Edward Basch? A. Yes.

Q. Did you see other police officers and detectives? A. I did.

Q. Did you remain there for a while after Patrolman Rabbitt took Fox away? A. I did.

Mr. Geoghan: No questions on behalf of Indovino.

Mr. Meadow: No questions in behalf of Rudish.

Mr. Solovei: I have no questions.

Mr. McGough: Would your Honor like to entertain a motion to adjourn for lunch?

The Court: Very well. We will take a 470
recess for luncheon at this time. Gentlemen of the jury, please don't discuss this case among yourselves or with any other persons, or permit anyone to speak to you about this case or discuss it in your presence. You must keep your minds open. Do not form or expres any opinion or conclusion as to the guilt or innocence of the defendants on trial or either of them, or any of them, until the case is finally submitted to you for your consideration after a charge on the law. You may retire and return at 2:15. 471

472 *George L. Corboy—For People—Direct*

AFTER RECESS, TRIAL RESUMED.

GEORGE L. CORBOY, Police Officer, Shield No. 10543, attached to the 60th Precinct, called as a witness in behalf of the People, being first duly sworn by the Clerk, Mr. Jehle, testified as follows:

*Direct examination by Mr. McGough:*

473 Q. You are a member of the Police Department, Officer? A. I am.

Q. For how long a period of time? A. 21 years.

Q. In the month of February, 1941, what Precinct were you assigned to? A. The 60th Precinct.

Q. And do you recall how you were working on that particular day, Saturday, the 15th of February 1941? A. I was doing the 4 to 12 tour.

Q. That would be what is called the late tour of duty? A. The late tour is from midnight to eight in the morning.

474 Q. Were you on foot patrol or in a radio car, or what? A. Radio patrol.

Q. Now what time did you leave the police station after your late tour that night? A. At about 25 after 12.

Q. At the time you left the police station, had you heard whether or not anything happened to Patrolman Leon Fox? A. I had heard that he had died.

Q. When you left the 60th Precinct on that night, where did you go to, Corboy? A. I went to 36th Street—no, to 2823 West 32nd Street, some friends of mine.

475

Q. Where is that, in Coney Island? A. In Coney Island, between Neptune Avenue and Mermaid Avenue.

Q. How long did you stay at that particular address? A. Oh, about five minutes.

Q. And will you tell us, please, what, if anything, you did after leaving that particular address? A. I went up 32nd Street to Mermaid Avenue, turned left and went down Mermaid Avenue to Stillwell, turned Stillwell left, going in the direction of Neptune Avenue, and was on my way home, and as I got opposite 2844, on the left side of the street, I observed an automobile, a dark blue Ford convertible sedan. The reason I observed that is because—

476

Mr. Solovei: I object to any reason, your Honor.

Q. You say you were on your way home at about that hour of the night? A. Yes, sir.

Q. And you told us that you went down Mermaid Avenue and you turned left into Stillwell? A. That is right.

477

Q. And you say as you were opposite 2844, you saw a car, is that right? A. Yes.

Q. Now at that particular time, had you any information with respect to what happened to Leon Fox, your brother officer? A. I did.

Q. I think you said a moment ago you had heard that Fox was already by that time dead? A. Yes, sir.

Q. When you saw this car that you just mentioned, did you do anything with respect to it? A. I did. I turned my car about and pulled up

right in back of this Ford and I got out of the car. I noticed that the rear license plate of the Ford was bent backward so it would be hard to read the license number of the plate. I went to the front of the car and I noticed the front plate was bent forward in the same manner. I flashed my light inside the car to see if there was a key in the car and I noticed that the wires had been crossed and cut and jumped. I looked on the floor of the car and noticed some insulation and
479 tubing on the floor. Of course I figured then it was a stolen car and I called up on the telephone, the station house, and asked them to look up to see whether there was an alarm on the car, and also mentioned that I had brought in two men previous, and they gave me a description of the car similar to that that was used in the Fox case.

Mr. Solovei: I move to strike that out.

The Court: Strike it out. The jury is instructed to disregard that statement.

480 Q. You did tell us that you brought two men into the police station before you went off duty at midnight that night? A. That is right.

Q. Do you know the names of those two men? A. One was Glodowsky.

Q. Glodowsky? A. Yes, sir.

Q. What is his first name? A. I think it is Benjamin.

Q. Benjamin Glodowsky? A. Yes, sir.

Q. Do you know the other man's name? A. I am not sure about his name; see, I had that name in my book, in my memorandum book; I had the name there but I cannot place it.

Q. Would you know it if you heard it? A. Yes, sir.

Q. Would it be Lester Windheim? A. Yes, sir.

Q. Is Glodowsky here today in the building? A. I saw him today.

Q. Well, now, you say that after you saw the car with these things that you narrated, you went and telephoned to the Precinct? A. That is right.

Q. Is that right? A. Yes. 482

Q. And after you telephoned the Precinct, did you go back to the car? A. I did.

Q. How long did it take to 'phone the Precinct and return to the automobile? A. I guess about eight minutes; eight to ten minutes.

Q. And did you remain at the automobile until somebody else arrived? A. I did.

Q. And who arrived at a later time, please? A. There were a number of detectives, and one I know was Detective Basch.

Q. Is that the gentleman sitting at my table here? A. Yes, sir. 483

Q. Detective Edward Basch? A. Yes, sir.

Q. And will you describe the car, please, that you say you saw at premises 2844 Stillwell Avenue? A. It was a dark blue convertible sedan, a Ford V8, 1936; license plates—four doors; license plates 1941, 6Q5923 N. Y. It had a—will I tell you about what marks were on it? What I observed on the car?

Q. Yes, will you please tell us. A. On the front right mudguard there was a bullet hole, and on the right side of the hood there was another indentation, a sort of ricochet bullet hit

484 it and bounced off; and the plates, both plates were bent, and the wires had been cut and jumped.

By the Court:

Q. What do you mean by "jumped"? A. The two wires were cut and tied together so the motor could be started without the ignition keys being turned on to make that connection.

485 By Mr. McGough:

Q. Officer Corboy, will you look at People's Exhibit 3 in evidence, please, and tell me whether that is the location of the car and the car that you observed when you turned down Stillwell Avenue, between Neptune and Mermaid Avenue, that night? A. That is.

Q. I show you this picture and ask you if that correctly represents the adjacent property where this car that you testified to was located by you on that night? A. Right in front of the

486 bungalow.

Q. You mean the bungalow that is portrayed on that photograph? A. I do.

Q. That picture was taken in the daytime, is that right? A. Well, there were a lot of pictures taken that night; that is, that morning, from one o'clock until I guess half past two or three o'clock, but I don't know whether this picture was taken later on in the day.

Q. Is that a correct representation of that particular spot where the car was parked? A. I beg pardon?

Mr. McGough: Read the question to him.

(The question was repeated by the stenographer.)

The Witness: It is.

Mr. McGough: May I offer that picture in evidence at this time?

The Court: Show it to counsel.

Mr. Geoghan: I thought it was in evidence.

Mr. McGough: That is another one. 488

Mr. Geoghan: No objection, with the concession that I have this morning, that it is not supposed to represent the scene at the time that the car was found.

Mr. McGough: That is correct. I will concede it.

Mr. Geoghan: No objection.

The Court: Mark it.

(Photograph received and marked People's Exhibit 7.)

Q. Now, Officer Corboy, just so we will know 489 exactly where this car was on 2844; will you mark a "X" on this photograph marked People's Exhibit 7, please. A. (Witness marks exhibit with "X".)

Q. Now is there an elevated railroad running along Stillwell Avenue at that spot? A. There is.

Q. Does it run parallel to the street or does it swerve at a certain portion? A. It swerves at a certain portion.

Q. Now I show you this photograph and ask

490 *George L. Corboy—For People—Direct*

you if it is a correct representation of Stillwell Avenue looking south toward the ocean at about the spot where you say you saw this car? A. Yes, it is.

Mr. McGough: May I offer that photograph in evidence, please?

The Court: Show it to counsel.

Mr. Geoghan: With the same concession; no objection.

491 The Court: Mark it.

Mr. McGough: I concede that it is not on the particular morning that the car was found.

(The photograph was received and marked People's Exhibit 8.)

By Mr. McGough:

Q. Now, Officer Corboy, I show you this photograph and ask you if it is not a correct representation of the same street at the same spot
492 looking in the opposite direction northerly towards Coney Island Creek? A. It is.

Mr. McGough: May I offer that photograph in evidence?

Mr. Geoghan: Same concession; no objection.

Mr. McGough: All right.

The Court: Mark it.

(Photograph received and marked People's Exhibit 9.)

Q. Now, Officer Corboy, I show you this picture and ask you if it is not a correct representation of the rear of the car as it was exactly as you first saw it on that particular night on Stillwell Avenue? A. Yes, it is.

Mr. McGough: I offer that photograph in evidence.

The Court: Show it to counsel.

Mr. Geoghan: Of course we will exclude the writing on the back of the photograph. 494

Mr. Meadow: The writing on the back we will object to.

The Court: Yes, we will cover that.

Mr. McGough: Yes, I think it should be taken out. We will block it out, Judge.

Mr. Geoghan: No objection to the picture.

Mr. McGough: I think before these should be shown to the jury, we should paste some paper on the back.

The Court: Yes, when the jurors are looking at the photograph, please do not turn it over and read the writing on the other side. Mark it. 495

(Photograph received and marked People's Exhibit 10.)

Q. Now, Officer Corboy, you testified, did you not, that when you examined the automobile, with respect to the ignition, you say the wires were cut and they were fused together or jumped? Did you say that? A. That is right.

Q. Is this a correct reproduction of what you saw when you first looked into that automobile with respect to the ignition? A. I must say now I am a little in doubt about this connection here; the two ends hanging down. At the time I saw it of course there was no white paper across there, but from the way they were—the wires may have been moved a little bit in order to take this photo.

Q. Were you there when detectives from the photo gallery arrived at the scene? A. Yes, but I did not put my head into the car.

Q. Were you there when they arrived at the scene? A. Yes, I was.

Q. Did you see them taking certain photographs? A. Yes.

Q. Will you look at that picture, please, and tell us first whether or not that is a picture of the interior of that car? A. That is.

Q. Now will you tell me whether that is a correct representation of what you saw at some time that night with respect to that automobile? A. That is.

Mr. McGough: I offer that picture in evidence.

The Court: Of course there is a hand here with a piece of paper in it. You did not see that when you looked at the car?

The Witness: No.

Q. Did someone hold up a white page or pad or paper behind the wires while you were there? A. If they did, I did not see it. I was out on the sidewalk and I was not paying any attention.

By the Court:

Q. Were the wires in this condition when you saw it? A. That looks similar to it, and the only thing is that they are hanging more straight, and I did not see it with that paper on it, and I saw it cut and the insulation on the floor, and this looks like the connection up here, but about it hanging level like that, I don't know.

Q. With the exception of that hanging straight down, and with the exception of the paper in the 500
hand there, you say that is an exact picturization of what you observed when you first looked into the interior of the car? A. Yes.

The Court: Show it to counsel.

Mr. Geoghan: We have no objection.

Mr. Solovei: I would have to object to it. The Officer says it is not exactly the way he saw it. There are some other things there. I do not see any importance to the thing. I don't know what he has in mind. I object to it in view of the fact that 501
the Officer says there is some change of some kind.

Mr. McGough: If there is any objection, I will ask it be withdrawn and marked for identification.

The Court: Mark it for identification.

(Photograph received and marked People's Exhibit A for identification.)

By Mr. McGough:

Q. Officer Corboy, you told us in your testimony

that when you examined the car that night, you saw what was a bullet hole had ricocheted on the car, is that right? A. That is right.

Q. I show you this photograph and ask you is this a correct representation of how the car looked when you saw it at that particular time on Stillwell Avenue? A. It is.

Mr. McGough: I offer that photograph in evidence.

The Court: Show it to counsel.

Mr. Solovei: I object to it on behalf of the defendant Malinski and I also object to the writing on the back of it.

The Court: The objection as to the writing is sustained.

Mr. Solovei: I object to the photograph upon the ground that it is incompetent, irrelevant and immaterial, and there is no testimony here to show that this photograph was taken how long after the alleged commission of the crime.

The Court: Objection overruled.

Mr. Solovei: Exception.

The Court: Mark it.

(Photograph received and marked People's Exhibit 11.)

Mr. Solovei: Your Honor will order the back of it deleted?

The Court: I have done so.

Mr. McGough: I will see to it that everything on the back is covered up.

The Court: Proceed.

By Mr. McGough:

Q. Officer Corboy, I think the hole that you testified to is apparent, but will you mark a large circle about the point that you say was the ricochet?

The Court: Point it out.

The Witness: Right here (indicating).

The Court: The Court has drawn an arrow to the spot indicated by the Officer, who sits here beside me, and has printed the word "Ricochet" at the bottom of the arrow. 506

Mr. Solovei: I object to the question, if your Honor pleases, upon the ground that there is no testimony before this Court to show that this man is qualified to testify to any particular hole in the fender, or whether it is from a bullet or from some other blunt instrument, as to how some little hole came into the fender of this car.

The Court: You should have made your objection before now. It is a little untimely but nevertheless I will sustain the objection. 507

Mr. McGough: I will ask a few questions on that.

The Court: Proceed.

By Mr. McGough:

Q. You are a policeman how long, please? A. 21 years.

Q. And during that time you have always been

armed with your own service revolver, haven't you? A. I have.

Q. I take it that you have fired that revolver on numerous occasions? A. I have.

Q. Have you attended rifle practice at the Police Academy? A. Pistol practice, I have.

Q. Rifle practice on occasions? A. Not in the Police Academy.

Q. Any time during the summer period have you fired any other weapon besides your own
509 service revolver? A. Sometimes.

Q. Have you seen and handled .45 calibre guns? A. Yes, sir.

Q. .38 calibre revolvers? A. I did.

Q. Short and long? A. I did.

Q. What kind do you have yourself? A. A .38 long.

Q. Bring it out and show it to us. A. I also have a .32 Special.

Q. Hold it by the handle. A. Yes.

Q. What particular type of ammunition does that gun fire? A. That is a .38 Special.

Q. Have you seen the effects of what those
510 bullets have done on metal objects? A. I have.

Q. Are you competent here to tell us—Question withdrawn.

Mr. Geoghan: I object to the question. That calls for a conclusion.

The Court: There is no question. It has been withdrawn.

Q. Have you had occasion to fire your own revolver and other guns at metal objects? A. I have.

Q. And have you seen at any time whether or not those bullets have perforated those metal objects? A. I have.

Q. Now are you prepared to tell us whether or not, in your opinion, you can tell what caused this particular perforation on the automobile that you say you saw on Stillwell Avenue that particular night of February 15, 1941, Yes or No?

Mr. Solovei: I object to it. 512
The Court: Yes or No.

Q. Yes or No. A. Yes.

The Court: What is the basis of the objection?

Mr. Solovei: All right, a Yes or No answer is all right. I withdraw the objection.

The Court: He said he is competent. He has had experience. Do you object?

Mr. Solovei: I object to the form of the question, yes, and move to strike his 513 answer out.

The Court: Repeat the question, please.

(The question was repeated by the stenographer.)

The Court: Yes or No.

The Witness: Yes, is the answer.

Q. What caused that perforation, Officer?

Mr. Solovei: I object to it.

The Court: On what ground?

Mr. Solovei: Upon the ground that

there is no proper foundation laid in the first place, and in the second place, a perforation such as appears in this piece of tin, on this mudguard, may be made by a thousand and one objects.

The Court: Wait a moment, Mr. Solovei. That is a matter that goes to the weight and credibility of the testimony, but not as to its admissibility.

Mr. Solovei: I object to it upon the
515 further ground that this witness cannot testify as an expert or otherwise that this perforation was made by a discharged bullet.

The Court: Well, that is what you contend, but I am now confining myself to a determination of whether his testimony is admissible, whether it is competent; not as to its weight or credibility; that is for the jury. Have you anything to offer to the Court on that point? Keep in mind that I am not ruling on the credibility or the
516 weight of his testimony. I am merely ruling upon its admissibility. He has testified that he has fired on numerous occasions, including objects constructed of metal, and that he has had experience in determining what the effect of the impact of the bullet upon such objects is, and he says that he is competent to tell that.

Mr. Solovei: Your Honor, there is not a single child that does not know if you fire a revolver through a piece of tin—

The Court: That goes to the credibility

or the weight of the testimony, but not as to its admissibility.

Mr. Solovei: Will you just let me ask this witness one or two questions on that point?

The Court: Yes.

By Mr. Solovei:

Q. Officer, this perforation here in the mudguard, which appears on People's Exhibit 11, do you see it from there? A. Yes. 518

Q. There is a slight hole in the right mudguard, is that correct? A. That is right.

Q. Now you have seen, have you not, in your lifetime, numberless holes in mudguards, haven't you? A. Yes.

Q. And the same kind of a hole could be made by any kind of a blunt instrument, isn't that right, Officer? A. I have not seen any of those kind. I have seen holes caused by accidents, big holes, pushed through the mudguards.

Q. You have seen little holes caused by rust and little holes caused by hammering with a chisel? A. Yes. 519

Q. And you say that it is possible by discharging a revolver into a piece of tin metal, such as we have here on the mudguard, that you could make a similar hole as appears on this photograph, People's Exhibit 11, isn't that correct? A. Repeat that, please.

Mr. Solovei: Please repeat the question to the witness.

(The question was repeated by the stenographer.)

The Witness: Yes.

Q. And there are probably a hundred different ways of marking that hole, isn't that right, Officer? A. Not that kind of a hole. That hole was made by a bullet.

Q. You say that hole was made by a bullet? A. Yes.

Q. You cannot make it with a chisel and a hammer, can you? A. No, not like that.

Q. Not exactly like that? A. No.

Q. Do you mean that? A. I mean that.

Q. Have you ever seen holes in mudguards similar to the one that you have here on People's Exhibit 11? A. Only bullet holes.

Q. Only bullet holes? A. Yes.

Q. You have never seen other holes like this? A. Not similar to the one here, not a hole like that. I have seen holes that size but never similar to that.

Q. Could you, from looking at this hole, tell us how far a distance the revolver was discharged before it made this hole? A. From how far?

Q. What distance would you say it was? A. Well, I know—do you want—I know already from observing the scene where the shooting took place, about how far.

Q. You mean you know because of the fact that you know the distance in this particular case? A. I know the scene where it happened.

Q. Without knowing that, would you be able to tell? A. Well, I may not be able to tell.

Q. You do not profess to be an expert on firearms, do you? A. No, not an expert on firearms.

Q. You never testified in your life as an expert on firearms, did you? A. No.

Mr. Solovei: No further questions.

Mr. McGough: May we have it marked?

Mr. Solovei: I press my objection.

The Court: Does any other counsel desire to ask questions on the voir dire?

(No answer by any of counsel.)

The Court: Your objection is overruled. 524

Mr. Solovei: Exception.

Mr. Meadow: The defendant Rudish joins in the objection.

The Court: Objection overruled.

Mr. Meadow: Exception.

By Mr. McGough:

Q. Now, Officer Corboy, when you examined the car, did you look all around the car and under the car? A. I did.

525

Mr. Carabba: I object to that as leading. I think the Officer should be permitted to testify what he did.

The Court: Objection sustained.

Mr. McGough: If there is any objection, I will withdraw it.

The Court: Proceed.

Q. You told us you went to the car and saw certain things? A. Yes.

Q. Then I asked you about certain photo-

graphs and they have been marked in evidence? A. Yes, that is right.

Q. Will you continue, please, and tell this Court and jury what, if anything, you found when you went around investigating and examining the car, as I was discussing it with you.

Mr. Carabba: Of course that is leading again and repetitious.

The Court: Objection overruled.

Mr. Carabba: Exception.

The Witness: When I returned, after making the telephone call to the station house, I observed a brown fedora hat.

By Mr. McGough:

Q. Where was it? A. On the ground, in the street, under the motor of the car, between the two front wheels. I also observed the ricocheted indentation of the bullet hole.

Q. And did you pick the hat up? A. I did.

Mr. Morrit: May I object at this point to testimony about the hat?

The Court: Objection overruled.

Mr. Morrit: Exception.

Mr. Solovei: May I, on behalf of the defendant Malinski, object to it upon the ground that it is incompetent, immaterial and irrelevant, and that the testimony here clearly shows that there was a lapse of from eight to ten minutes between the time he left the automobile and telephoned, and returned, and therefore any-

thing that was found around the car or under the car or near the car is objectionable.

The Court: Objection overruled.

Mr. Solovei: Exception.

Mr. Geoghan: On behalf of the defendant Indovino, I object to it.

The Court: Objection overruled.

Mr. Geoghan: Exception.

By Mr. McGough: 530

Q. You did not say you were gone ten minutes? You said you were gone what, eight minutes? A. About eight minutes.

Q. And it might have been less? A. It might have been less or a little more.

Q. Anyway, you found the hat? A. Yes, sir.

Q. What did you do about the hat? A. I picked it up.

Q. After you picked it up, did you look at it? A. I did.

Q. What, if anything, did you do with it then? 531

Mr. Solovei: I object to it.

The Court: Objection overruled.

Mr. Solovei: Exception.

The Witness: I turned it over to Detective Basch.

By Mr. McGough:

Q. I show you this hat and ask you if this is the hat? A. That is the hat.

Mr. McGough: May I have that marked for identification, please?

532 *George L. Corboy—For People—Cross*

The Court: Yes, mark it.

(Hat received and marked People's Exhibit B for identification.)

By Mr. McGough:

Q. Were you present when Detective Basch did anything with respect to this hat? A. I was.

Q. And what was that, please? A. He marked his initials in it.

533 Q. What are his initials? A. E. B.

Mr. McGough: Your witness.

*Cross-examination by Mr. Geoghan*:

Q. What time was it on that morning or that evening of February 15th, or midnight of the 16th, that you first saw the car? A. What time?

Q. Yes. A. That was about one a. m. on the 16th.

Q. And you made a notation of that in your
534 book? A. I have it in my book.

Q. You have it? A. Yes, sir.

Q. Have you got it with you? A. No, I have not my book with me.

Mr. Geoghan: That is all.

*Cross-examination by Mr. Carabba*:

Q. Officer Corboy, Stillwell Avenue, between Mermaid and Neptune, is the street that you found the automobile on, is that correct? A. That is right.

Q. And one side of Stillwell Avenue is occupied by the elevated structure, is that correct? A. That is right.

Q. There are no houses on that side? A. That is right.

Q. Is that the side of the street you found the car on? A. No.

Q. You found it on the opposite side? A. Yes, sir.

Q. You were through with your tour of duty at what time? A. I was through at twelve but 536
by the time I changed my clothes and got out.

Q. Where did you 'phone from when you 'phoned to the station house? A. From Stillwell Avenue and Mermaid.

Q. Is that a police box on that corner? A. No.

Q. You did not use the police box? A. No.

Q. Where did you go? A. I ran up to Mermaid Avenue.

Q. What is that? A. I ran to Mermaid Avenue.

Q. Where on Mermaid Avenue did you 'phone from? A. At a bar and grill on the north—on the southwest corner of Mermaid and Stillwell. 537

Q. There is a police box, is there not, on the corner of Mermaid and Stillwell? A No, there is not.

Q Where is the nearest police box to where you found the car? A Neptune Avenue and Stillwell.

Q. Where? A. Neptune Avenue and Stillwell.

Q. Well, wasn't Neptune and Stillwell nearer to where you were to 'phone? A. I believe it was.

Q. And if you went to the police box, all you have to do was open the door and take the re-

538 *George L. Corboy—For People—Cross*

ceiver off, and you are connected right with the House? A. That is right.

Q. Wouldn't it take you more than ten minutes to go where you said you went on Mermaid Avenue to 'phone? You 'phoned in a regular coin box, didn't you? A. Yes.

Q. Wouldn't it take you more than ten minutes to go where you said you 'phoned and come back to the scene where you found the car? A. No. it would take me about one minute.

539 Q. Well, if you used the police box on the corner of Stillwell and Neptune, you would not have to use any coin at all? A. That is right. I did not think of that box at the time.

Q. But there is a box there?

The Court: What difference does that make? What is the point of the cross-examination?

Mr. Carabba: The period of time, your Honor, that elapsed from the time Officer Corboy first saw the car and when he reported it.

540 The Court: I see.

Mr. Carabba: And then when he returned, he found a hat.

The Court: All right.

Mr. Carabba: That is all.

*Cross-examination by Mr. Solovei:*

Q. This place on Stillwell Avenue where you saw this car is well inhabited? A. Well, quite.

Q. There are apartment houses there and there

are stores there, is that correct? A. Yes, there is some small stores.

Q. And the elevated structure and the elevators were running on that night? A. On the other side of the street.

Q. On the other side of the street? A. Yes, sir.

Q. The people were coming off the elevated and going up to the elevated? A. Not at that particular time I found the car.

Q. I mean not at that particular second, but between the hour of 11 and 1, in all probabilities, people did go up and down that elevated station? A. I don't know how it was there. 542

The Court: This was in February, wasn't it?

The Witness: Yes, sir.

Q. Stillwell Avenue is a busy spot at that time? A. Up around Surf Avenue, it is.

Q. And it was around one o'clock, in any event, that you picked this hat up, is that correct? A. That is right. 543

Mr. Solovei: I now renew my motion and object to any testimony with reference to the hat, upon the ground that it is too remote and highly improper.

The Court: Objection overruled. The motion is denied.

Mr. Solovei: I take an exception.

Mr. Morritt: On behalf of the defendant Rudisin, I move to strike it out.

The Court: Same ruling.

Mr. Morritt: Exception.

544 *George L. Corboy—For People—Redirect—Recross*

By Mr. McGough:

Q. Will you take this red pencil, please, and indicate with a box on the survey, People's Exhibit 2 in back of you, just where it was that you saw the car on Stillwell Avenue. Just look at the location plan at the left. You said it was between Neptune and Mermaid. A. Between Neptune and Mermaid; that is correct. Is this
545 the sidewalk here?

Q. That line indicates a sidewalk. Mark it with a box, Officer, so we can see it from the back here. A. (Witness marks plan with a box.)

Q. Now, Officer, from where that car was parked, how far a distance would you say it was to the BMT station at Coney Island? A. Oh, I would say about from 150 to 225 feet.

Q. Maybe a block, or more or less, is that right? A. About a block, because the station—there is two ways of getting into the station, and if you go in the Stillwell Avenue side, that
546 is only about, oh half a block from Mermaid Avenue to the station.

Q. It is rather close to the station, is that it? A. Yes, sir.

Mr. McGough: That is all.

By Mr. Carabba:

Q. It is a fact, that at that point, that is the terminal for the Sea Beach Line, is that correct? A. Yes.

Q. And the West End Line? A. Yes, sir.

Q. The Brighton Line? A. Yes, sir.

547

Q. And you have the Sea Gate Line trolley there? A. Yes.

Q. You have the West End Line trolley, is that correct? A. The West End Line; that is right, that runs along Stillwell Avenue.

Q. You have the railroad, the Sea Beach, the West End Railroad, I mean the subway of Sea Beach, the subway West End at that terminal end there, is that correct? A. That is right.

548

Mr. Carabba: That is all.

By Mr. McGough:

Q. And they all go to New York, is that right? A. Yes, all except the Railroad Avenue car; that goes to Sea Gate.

Mr. McGough: That is all.

By Mr. Carabba:

549

Q. There is one more line, the Culver Line, is that right? A. Yes.

Mr. Carabba: That is all.

550 *Det. Edward Basch—For People—Direct*

DETECTIVE EDWARD BASCH, Detective-Police Officer, City of New York, Shield No. 1245, attached to the 66th Squad, called as a witness in behalf of the People, being first duly sworn by the Clerk, Mr. Jehle, testified as follows:

*Direct examination by Mr. McGough:*

Q. Now Detective Basch, in February of 1941, where were you assigned, please? A. The 60th
551 Squad Detectives.

Q. How long have you been a member of the Police Department? A. 16 years.

Q. And how long have you been a member of the Detective Bureau of that Department? A. At the Coney Island District?

Q. No, of the whole Detective Bureau? A. Seven years.

Q. Was this case assigned to you after it occurred on February 15, 1941? A. Yes, sir.

Q. Did you respond to the scene that night and take up the investigation the minute you were assigned to it? A. Yes, sir.
552

Q. I show you People's Exhibit B marked for identification, and ask you, please, if you have seen that before and when it was the first time you cast your eyes on it. A. Yes, sir. I saw it on February 16th at about 1:10 a. m. Patrolman Corboy delivered it to me.

Q. And without telling us what was said, did Corboy and you have a conversation with respect to that People's Exhibit B? A. Yes, sir.

Q. And after that, did you do certain things with respect to that hat? A. Yes, sir, I marked my initials in front of Patrolman Corboy, inside the sweatband of that hat.

Q. And your initials are what, sir? A. E. B.

Q. And E. B. was placed on the inside sweatband by you at that time? A. Yes, sir.

Q. Now subsequent to the 15th of February 1941, did you work on this case, Yes or No? A. Yes, sir.

Q. And was there a time later on when you left the 60th Squad? A. Yes, sir.

Q. And what Squad did you go to? A. To the 66th Squad.

Q. And do you recall the month of the year 554
that was? A. Around November, I think, of 1942.

Q. And do you know the name of the Officer or Detective that received the case when you left the 60th Squad? A. Yes, sir, Detective George Low.

Q. He is still on the case so far as you know? A. Yes, sir.

Mr. McGough: You may examine.

Mr. Geoghan: No questions.

Mr. Carabba: No questions.

555

Mr. Solovei: May I ask this Detective one question, if your Honor pleases?

The Court: Yes.

*Cross-examination by Mr. Solovei:*

Q. Did you look for any fingerprints on this hat? A. Yes, sir.

Q. Did you find any fingerprints on it? A. No, sir.

Q. No fingerprints at all? A. No, sir.

Mr. Solovei: That is all.

556 *Det. Edward Basch—For People—Redirect*

By Mr. McGough:

Q. In all your time in the Police Department did you ever see a fingerprint on any hat?

Mr. Solovei: I object to it.
Mr. Morritt: I object to it.
The Court: Objection overruled.
Mr. Solovei: Exception.

557 Q. Did you hear me?

Mr. Solovei: I object to it upon the ground that the question is highly improper, and whether he did see or did not see, I do not think he is a qualified expert to testify as to whether fingerprints can be on hats or coats.

The Court: Objection overruled.
Mr. Solovei: Exception.
Mr. Carabba: I make the same motion on behalf of the defendant Rudish.
The Court: Objection overruled.
558 Mr. Carabba: Exception.
Mr. Geoghan: The same objection on behalf of the defendant Indovino.
The Court: Objection overruled.
Mr. Geoghan: Exception.
The Witness: No, sir.

By the Court:

Q. You mean, a fingerprint on a felt hat? A. No, never saw a fingerprint.

*Pvt. Benjamin Glodowsky—For People—Direct* 559

By Mr. McGough:

Q. Can you get a fingerprint from any cloth, if you know? A. No—

Mr. Solovei: I object.

The Court: Objection sustained as to that.

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PRIVATE BENJAMIN GLODOWSKY, re- 560
siding at 3066 Brighton 13th Street, Brooklyn, N. Y., called as a witness in behalf of the People, being first duly sworn by the Clerk, Mr. Jehle, testified as follows:

*Direct examination by Mr. McGough:*

Q. Your name is Benjamin Glodowsky? A. Yes, sir.

Q. You are a Private in the Armed Forces of the United States Army? A. Yes, sir.

Q. And at the present time, Glodowsky, where 561
are you stationed? A. Camp Hood, Texas.

Q. Camp Hood? A. Yes.

Q. Did you come from Camp Hood, Texas, to testify at this trial at my request? A. Yes, sir.

Q. How old are you, Private Glodowsky? A. 21.

Q. Now do you recall the 15th day of February, 1941? A. Yes, sir, I do.

Q. Do you recall where you were at about 11 o'clock on that particular night? A. Yes, sir.

Q. Where were you? A. I was just passing 12th Street going towards 11th Street on the north side of Surf Avenue.

562 *Pvt. Benjamin Glodowsky—For People—Direct*

Q. Were you going towards Sea Gate or were you going toward Ocean Parkway? A. I was going towards Ocean Parkway.

Q. Were you alone or were you in company of somebody else? A. No, sir, I was with a friend of mine.

Q. What is his name? A. Lester Windheim.

Q. Do you know where Lester Windheim is now? A. He is in the Navy. He is on the water somewhere.

563 Q. He is on the ocean? A. Yes.

Q. As you were passing West 12th Street and Surf Avenue, was there anything that attracted your attention? A. As I passed 12th Street and Surf Avenue?

Q. On your way to Ocean Parkway? A. No, sir.

Q. Did anything occur at about that time and that place? A. Yes, sir.

Q. Tell us about it. What did you see and what did you hear. A. As I was passing 12th Street and going towards 11th Street, on the north side of Surf Avenue, I heard a series of 564 two shots. We turned and started running towards the corner of 12th Street and crosed Surf Avenue.

Q. Toward what corner? A. Going to the corner of the bank.

Q. You mean the Brooklyn Trust Company? A. That is right, and after the first series of two shots, while we were running across the street, we heard another series of shots, about five or six, and as we got to the corner, we heard Mr. Dolinsky hollering for help.

Q. Who is Mr. Dolinsky? A. He is the manager of the Loew's Theater.

Q. You saw him there that night? A. Yes, sir.

Q. All right, continue. A. And we turned the corner and he was hollering for help, and he said a cop had been shot. As we looked down the street a few yards, we seen the cop laying on the sidewalk. We ran towards the Fascination Game and we called the police.

Q. Who called the police? A. I did.

Q. And the Fascination Game, where was that, 566
please? A. I think it is about half a block from 12th Street.

Q. On the same side? A. Yes, sir.

Q. You ran there to telephone? A. And called the police, and then we went back to the scene, and there was a car already there, a police car.

Q. I cannot hear you. A. There was already a police car at the scene, and while two policemen took us to 12th Street—to the 8th Street station where we later identified the car.

Q. Well, before you identified the car, had you seen an automobile at the corner of West 12th 567
Street and Surf Avenue? A. Yes, after the first series of two shots, we started running towards the corner of the bank, and a car shot out from the curb. It was very fast, and went down 12th Street towards Neptune Avenue.

Q. Were the lights of that car on or off? A. The lights were out in that car.

Q. Can you describe that car for us, please? A. Yes, sir; the car was a blue body with a cloth top.

Q. A small car or a large car? A. Well, it was a small car.

568 *Pvt. Benjamin Glodowsky—For People—Cross*

Q. Now after you telephoned the police, as you said, did you go back to West 12th Street and Surf Avenue? A. That is right.

Q. Did you see the policemen and the detectives there? A. Yes, sir.

Q. Were you able to see any persons in the car? A. No, sir, I did not.

Q. I hand you People's Exhibit 3 in evidence and ask you if this is a picture of the car that you saw that night? A. That was the car.

569 Q. Is that the car you say you saw dash across Surf Avenue going on West 12th Street? A. That is right.

Mr. McGough: Your witness.

Mr. Morritt: No questions.

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*Cross-examination by Mr. Geoghan:*

Q. You say you saw the car when it was passing where you and your friend were walking

570 along? A. That is right.

Q. Was that before you heard the shots or after? A. Well, we heard a series of two shots and then we started across the street and running towards the corner of the bank, and we heard the other series of the shots, and the car pulled out from the curb.

Q. How long did you have it under observation? A. About a second or two.

Q. About one second or two? A. Yes, sir.

Q. And you describe that picture as the car that you saw for a second or two on that night? A. Yes, sir.

By Mr. McGough:

Q. But you saw that car for some length of time on Stillwell Avenue, is that what you said? A. Yes, sir.

Q. And you had occasion to look at that and you identified that as the same car? A. I identified that car that same night.

Q. How did you get from where you were that night to Stillwell Avenue? A. We were brought by two policemen in the car. 572

By Mr. Geoghan:

Q. How long was it after you saw the car for one or two seconds that you said, that you saw it again that night or that following morning? A. I think about two hours.

Q. About two hours after? A. Yes, sir.

Q. How far away from the place where you first saw the car was it when you saw the car two hours afterwards? A. You mean the first time I saw the car?

Q. No, the second time. A. How far away 573 from the car was I?

Q. You say you saw the car first for about one or two seconds as it passed you? A. That is right.

Q. And then two hours later you saw a car again? A. That is right.

Q. And the car that you saw two hours afterwards, of course you had plenty of opportunity of examining it, didn't you? A. Naturally.

Q. And you mean, this is a picture of the car

574 *Julius Gimbel—For People—Direct*

that you saw two hours afterwards? A. That is right.

Mr. Geoghan: That is all.

By Mr. McGough:

Q. And is that the picture of the car that you saw dashing across West 12th Street? A. That is a picture of the car that I saw dashing across.

575 Q. Is that a picture of the car that you saw at the time you heard shots? A. Yes, sir.

Q. Please tell us about how far were you from this car at the time those shots were going on? A. As the car shot by me, I was about 20 yards from the car.

Mr. McGough: That is all.
Mr. Geoghan: No further questions.
Mr. Carabba: No questions.
Mr. Solovei: No questions.

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576 JULIUS GIMBEL, residing at 2358—84th Street, Brooklyn, N. Y., called as a witness in behalf of the People, being first duly sworn by the Clerk, Mr. Jehle, testified as follows:

*Direct examination by Mr. McGough:*

Q. Mr. Gimbel, by whom are you employed, please? A. By E. W. Bliss.

Q. E. W. Bliss & Company manufacture what? A. It is a war plant.

Q. A war plant? A. Yes, sir.

Q. And how long have you been employed there? A. Since November 6, 1941.

Q. Are you married or single? A. I am married.

Q. Have you ever been convicted of a crime? A. No.

Q. Do you recall Saturday night, the 15th of February, 1941? A. Yes, sir.

Q. Do you recall where you were at about the hour of 11 p. m.? A. Yes.

Q. Where were you, please? A. I was on Surf 578
Avenue and 12th Street.

Q. That is in the Borough of Brooklyn, County of Kings? A. Yes, sir, that is in Coney Island.

Q. Were you alone or were you in company of somebody else? A. I had two girl friends with me.

Q. You had two girl friends with you? A. Yes.

Q. And at that time were you single? A. Yes.

Q. Was Mrs. Gimbel one of the girls? A. Yes, sir.

579

Q. Now did something happen at that time and place that attracted your attention? A. Yes, as we were approaching the corner of 12th Street and Surf Avenue, I saw and heard shooting and gun flashes, and I put the girls down behind the car. I was on the curb.

Q. Tell us first, please, were you on Surf Avenue or were you on West 12th? A. I was on Surf Avenue, approaching 12th Street.

Q. Were you on the north side toward Neptune Avenue or were you on the south side

toward the boardwalk? A. I was on the north side.

Q. And were you walking towards Sea Gate or toward Ocean Parkway? A. Towards Ocean Parkway.

Q. Now you say you heard some gunfire? A. Yes, I heard gunfire and I saw quite a bit of flashes coming from 12th Street.

Q. From what particular corner? A. That is diagonally across the street from where I was at the time.

Q. Do you know what is located on that corner? A. Yes, there is a hotel of some sort; that is the corner that I was on.

Q. Where the flashes came from, do you know what is on that corner? A. Yes, there is a bank on the corner.

Q. All right, continue. A. I was on the curb and I heard, as I said, I heard the shooting and the gun-play, and I saw the flashes, and I put the girls down behind the car because I immediately realized that something unusual had taken place, and then, as I say, there was quite a bit of shooting.

Q. How many shots or flashes did you see or hear? A. I would say there were five or seven shots. The last two shots came kind of slow; that is, they were dragged out, and as I recall there was a slight pause for only about a second or so, and then I walked towards the corner, leaving the girls by the car, and as I approached the corner, there was a roar, and this car shot out from that street; from 12th Street.

Q. What kind of a car was it? A. It was a four-door sedan.

Q. A small car or a large one? A. No, it was a small car.

Q. How far were you from that car at the time that it shot past you? A. About your distance from me.

Q. Well, can you approximate? A. About 15 foot.

Q. How many men were in that automobile, Mister—

Mr. Morritt: I object, if the Court pleases. 584

The Court: If you know.

By Mr. McGough:

Q. How many men did you see in the automobile?

Mr. Morritt: I press my objection. There is no testimony that he saw anyone.

The Court: If he knows; if he saw any. First of all, let us know whether he saw anybody. 585

Mr. McGough: I will withdraw the question.

The Court: Proceed.

By Mr. McGough:

Q. You say you were about 15 foot from the car? A. Yes, sir.

Q. Did you see anybody in the car? A. Yes.

Q. Now, Mr. Gimbel, will you tell me how many men you saw in the car? A There were three men.

586 Q. And tell me, please, how you saw them? How were they placed and where were they seated. A. There were two men in the front, and one man in the back that was bent over.

Q. Can you describe the men in the front, please. A. No. They were two short men. Briefly—I only got a shot of the driver because it went past at such a terrific speed, kind of little full-faced.

Q. How about the man in back, Mr. Gimbel?
587 A. Well, he was a thin man and his head was bent over, kind of ducking, and his hair was slicked back.

Q. So that you were able to see his hair? A. Yes, I made out his hair.

Q. Did you see any hat on his head or in his hands? A. No.

Q. Would you say the man in the back was a thin man or a stout man? A. He was a thin man.

Q. Well, after that happened, Mr. Gimbel, what did you do? A. Well, they passed and I watched them going down 12th Street.

588 Q. Toward the creek? A. Passing under the elevated and heading down that way, and I told the girls to remain where they were and I walked across the street because I had heard a man hollering for help.

Q. Who was that, if you know? A. That was Mr. Dolinsky.

Q. That was the manager of the theater? A. Yes, sir.

Q. Yes? A. As I approached him, I asked him what was wrong.

Mr. Geoghan: I object to that.
The Court: Objection sustained.

By Mr. McGough:

Q. Don't tell us that. Did you have a talk with him? A. Yes.

Q. Did you see anybody in uniform on the sidewalk, or any place else? A. No, not where he was at that time.

Q. At any time, did you see a man in uniform? 590
A. Yes, sir.

Q. When was that? A. After I had spoken with the manager, and after he told me that a policeman had been shot.

Q. Don't tell us what he said. Did you see anybody that was on the sidewalk? A. Yes, sir.

Q. Who was that somebody? Was it a man in uniform or otherwise? A. It was a man in uniform.

Q. Can you tell us how far from where Dolinsky was on the corner that you saw the man in uniform? A. I met Dolinsky on the opposite corner. 591

Q. Would that be the corner of Childs Restaurant? A. Yes, sir.

Q. And did you cross over to the other side where you say Fox was? A. Yes, sir.

Q. Did you talk to Fox? Did you go up to him? A. Yes.

Q. At that time was he conscious or unconscious? A. He was conscious.

Q. Will you describe the position of the body, please? A. He was lying directly across the

592 doorway with his hat a couple of inches from his head.

The Court: Speak louder.

The Witness: He was lying across the doorway. His hat was a couple of inches from his head and the gun was a couple of inches from his right hand.

By Mr. McGough:

593 Q. Can you describe that gun? A. Yes, it was a nickel-plated gun.

Q. What kind of a handle? A. A pearl-handled revolver.

Q. How far was that from his right hand? A. Just a couple of inches.

Q. Was he able to talk to you, Yes or No? A. Yes.

Q. Was his winter overcoat on? A. Yes.

Q. Buttoned up to his collar? A. Yes, sir.

Q. Did you do anything with respect to his overcoat? A. Yes, I opened up his collar be-
594 cause he was choking and coughing some blood up—

Q. You say you saw blood? A. Yes.

Q. Coming from where? A. From his mouth, and I opened up his collar and I figured maybe that will relieve his breathing a little, and he asked me to—

Mr. Geoghan: No—

Mr. McGough: Never mind what he asked.

Mr. Geoghan: I object to this line of

595

testimony on the ground that it does not mean anything at all.

The Court: Objection sustained.

By Mr. McGough:

Q. Were you there, Mr. Gimbel, when the police officers arrived? A. Yes, sir.

Q. And did you give your name and address to somebody there at that time? A. Yes, I did.

Q. Was this policeman in uniform, did you say? A. Yes, sir.

596

Q. Sometime later that night, were you down on Stillwell Avenue? A. Yes, sir.

Q. Did somebody take you down there? A. Yes.

Q. Did you see an automobile? A. Yes.

Q. And did you identify that as the car you saw dash by with the three men in it? A. Yes.

Mr. Carabba: Of course that is leading.

Mr. McGough: That is preliminary.

The Court: Proceed.

597

By Mr. McGough:

Q. I show you People's Exhibit 3 and ask you if that is a picture of the car that you saw at that time? A. I got the side view of it.

Q. Is that the car? A. Yes.

Q. Now when you saw the car dash by West 12th Street under the Elevated, do you mean the elevated structure that is shown here in People's Exhibit 5 in evidence? A. Yes, sir.

Q. In other words, if you turn around, Mr. Gimbel, and look at People's Exhibit 2, the sur-

598 *Julius Gimbel—For People—Cross*

vey; stand up, please, where the red markings are; can you indicate where the elevated structure cuts across West 12th Street? Would that be about where the elevated structure would be? A. Yes, sir.

Q. So that a car going north toward Neptune Avenue and West 12th Street would have to go under those elevated tracks, is that right? A. Yes.

Q. And those are the tracks that you see here
599 in People's Exhibit 5? A. Yes, sir.

Mr. McGough: Your witness.

*Cross-examination by Mr. Solovei:*

Q. This was a closed four-door sedan, is that right? A. Yes, sir.

Q. About 11 o'clock at night? A. Yes.

Q. You saw a car dash by you while you were sitting in another car talking to your girl friends? A. No, I have not got a car.

Q. You did not have a car? A. No.
600 Q. You were on the sidewalk? A. Yes, sir.

Q. Talking to your two girl friends at the time? A. No, not at the time of the shooting.

Q. What? A. Not at the time the car flew past.

Q. Were you by yourself? A. No.

Q. Were you standing and talking to anybody? A. No.

Q. Where were you when this car passed you? A. I was standing directly on the corner with two girls at the car where I left them.

Q. You were standing and talking to two girls on the corner of Surf Avenue and what

street? A. No, sir, I was not talking. I was standing at the corner of 12th Street with the two girls at the car, when I left them, just as I saw the shooting.

Q. Now, Mr. Gimbel, I want to get this right. You were standing on the corner talking to the two girls? A. No, I think you have the story wrong.

Q. I want to get it right. I am asking you, will you tell me just where you were at the time the car passed you? A. The conversation 602
stopped when the shooting took place.

Q. Where were you standing when this car passed you? A. Right on the corner.

Q. The corner of where? A. The corner of 12th Street and Surf Avenue.

Q. Were you on the opposite side of the street where the shooting took place or on the same side of the street? A. I was diagonally across from the shooting on the opposite side of the street.

Q. And then this car passed you while you were standing on this corner? A. Yes.

603

Q. Is that right? A. Yes.

Q. It was a four-door closed sedan car? A. That is right.

Q. Is that right? A. Yes.

Q. And then you say you saw three people in the car? A. Yes.

Q. They were seated in the car? A. Yes, the three of them were seated.

Q. And you could tell from the position they were seated in whether they were short or tall men, is that right? A. The two men in front were short.

Q. You could tell from the position while seated in this sedan car whether they were short or tall? A. That is, you see, it is the man who was driving the car looked as though he was—that he could not reach the pedals—usually in a short man he uses a pillow, whereas this man looked as though there was no pillow behind him. He was bending over the wheel reaching—that is—that is the impression I got immediately.

605 Q. The impression you got of the men that were in the car was that two men in the front will be about 5 feet tall, is that it? A. They were shorter than I was.

Q. How tall are you? A. 5 foot 6.

Q. Would you say they were about 5 foot tall? A. They were in between 5 foot, 5 foot 3 and 5 foot 4.

Q. You can tell that from the way they were sitting in the car? A. Yes.

Q. In a closed car; in a sedan car? A. The windows were open, the front one, because he had his hands sticking out; his arm sticking out
606 at the time, his hands on the wheel.

Q. Can you tell us whether—did you look at their nails; could you see their nails on their hands? A. No, they were going too fast.

Q. What? A. They were going too fast.

Q. They were going too fast? A. Yes, sir.

Q. You could not tell us whether the nails were manicured or not? A. If they would have stopped at the time, I would have looked.

Q. How fast would you say they were going when they passed you? A. Well, they roared, and I have not seen a car roar out like that for

a long time. Maybe you would see it on the speedway.

Q. The car that passed you was going very fast, wasn't it? A. Yes, very fast.

Q. And you got a fleeting glance at the car and the persons in the car, isn't that correct? A. Yes.

Q. And the glance that you got was something that just took about a second and they passed you right by? A. The glance started as I heard the roar, and I followed it across the car-tracks, 605
and as it went past in front of me, and the glance continued as they continued on.

Q. The car was parked on the other side of the street diagonally across from where you were standing originally, isn't that so? A. The car—I don't know where it was parked. All I did say was I saw it roar out of the middle of the street.

Q. It did not make a turn, did it? A. Not at that speed.

Q. It just shot right by you where you were standing? A. That is right. I saw it come out 609
of the street headed right towards the middle and it seemed to pick up momentum on the car-tracks and head right past me.

Q. And from your observation, you could tell how the man's hair was combed, in the back of the car? A. I saw the man's head distinctly, in the back of the car.

Q. The back of the head? A. No, no, I saw—well, I saw the back of the head and also part of the front because the inside of the car was dark, otherwise I would have seen their faces.

Q. So you could just see the back of the head

from where you were standing? A. Just the man in the back.

Q. Did he have his hair parted in the middle? A. His hair was combed back slick.

Q. Did he have his hair parted in the middle? A. I would have to be on top of him to see that.

Q. And you could see that his hair was combed back from where you were? A. Yes.

Q. And this car passing by with this terrific speed, on this fleeting glance, you could tell that
611 his hair was combed back slick? A. It was not windblown.

Q. It was not windblown? A. No.

Q. This was a cold day in February? A. Yes, quite a cold day.

Q. Kind of windy, wasn't that neighborhood, around that time of the year? A. Not too windy that day.

Q. Not too windy, on February 15th, around Coney Island, around 11 o'clock at night? A. That is why we took this walk instead. We were going to the movies that night and we had started to walk towards Feltman's because it
612 was such a nice clear night.

Q. And it was a cool night, wasn't it? A. Yes, it was a cool night.

Q. What? A. Yes, sir.

Q. You spoke this matter over with detectives a number of times, haven't you? A. When I was called down—

Q. Did you, Yes or No? A. No.

Q. Never spoke to the detectives about this case? A. They asked me what I knew about the case.

Q. Which detectives did you talk to? A. Well,

there was one man from the District Attorney's office that came to my house.

Q. Do you know his name? A. It is L—something—not offhand.

Q. Well, there came a time when detectives asked you whether or not you could identify anybody, didn't they? A. Yes.

Q. And you looked over many persons, didn't you, Yes or No? A. No.

Q. You never looked over anybody? A. Only the day that I was taken down; that was—I 614
think it was the second night, the night after the murder, when two officers came and took me down to Police Headquarters in New York and asked me to give a description of the men.

Q. Well, now, Mr. Gimbel, from February 15, 1941, up to the present time, how many detectives did you talk to about this case? A. Not very many. Well, there was this detective from the District Attorney's office that came to my house.

Q. Can't you tell us how many you spoke to? Was it five or six or seven or ten? A. Well, 615
from the very beginning, the night of the murder, I was taken to the Police Headquarters—

Q. I am asking you— A. You want to know how many detectives.

The Court: He is trying to figure it out.

Q. Let him figure out in his own mind and tell it to us. A. There were quite a number of detectives down at the Coney Island Police Station that night and I spoke to them and I gave them

a description. I gave them the story I am telling you right now, and as for the identification of the men, they took me down the very next day, that was two more detectives, and asked me to identify and see if I could identify any men, and I looked through the files—

Q. Just stop right there. You did not identify anybody, is that the answer? A. My description still stood.

Q. I say, you did not identify anybody, did you? A. No, sir.

By the Court:

Q. You did not see the faces of any of the men, did you? A. No, sir.

Mr. Solovei: That is all.

*Cross-examination by Mr. Morritt:*

Q. Did I understand you to say that from where you were, you got the impression that the person driving the car could not touch the pedal with his foot? A. He was touching the pedal all right but he was trying—the way he was hunched over the wheel and bending down, I have seen small drivers—

Q. I did not ask you that. A. That was my impression, that he was having a time driving the car.

Q. Did you testify before this Court and jury that you had the impression that the driver could not touch the pedal; that he was so small? A. I told the jury that the driver was having a time touching the pedal of the car.

*Pvt. August A. Hollingsworth—For People—Direct* 619

Q. You got the impression from where you stood? A. Yes.

Mr. Morritt: That is all.

Mr. Geoghan: No questions.

Mr. McGough: That is all, step down, Mr. Gimbel.

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PRIVATE AUGUST A. HOLLINGSWORTH, residing at 43 Chestnut Street, Brooklyn, N. Y., called as a witness in behalf of the People, being first duly sworn by the Clerk, Mr. Jehle, testified as follows: 620

*Direct examination by Mr. McGough:*

Q. You are a Private in the United States Army, Mr. Hollingsworth? A. Yes, sir.

Q. And did you come from Camp Funston, in the State of Kansas, at the request of the District Attorney to testify here today? A. Yes, sir. 621

Q. In February of 1941, where were you living, please? A. 43 Chestnut Street.

Q. And that time did you own an automobile? A. Yes, sir.

Q. Tell this Court and jury what type of car you owned at that time. A. It was a 1936 Ford, V8, four-door convertible sedan.

Q. What color and what kind of roof did it have? A. It was blue in color and had a tan canvas roof; brown canvas roof.

Q. Now for the year 1941 did you have New York license plates for that car? A. Yes, sir.

622 *Pvt. August A. Hollingsworth—For People—Direct*

Q. What were the license plate numbers, please? A. 6Q5923.

Q. Now at about what hour on the 15th of February, 1941, did you last see that car? A. About nine o'clock.

Q. 9 p.m. or 9 a.m.? A. 9 p.m.

Q And when you say you saw that car the last time on the 15th of February, where did you see it? A. What was that, sir?

623 Q. Where did you see it? A. At the northwest corner of Pine and Fulton Street.

Q. Is that in the Borough of Brooklyn, County of Kings? A. Yes, sir.

Q. And after you left it there at that hour, 9 o'clock, when did you come back to get it again? A. About 11 o'clock; 11 p.m.

Q. Did you see the car at 11 o'clock that night? A. No, sir.

Q. Did you do anything about the car? A. Yes, sir, I telephoned to the 75th Precinct and they told me—

624

Mr. Solovei: I object to anything this man did.

Q. Don't tell us what you said or what they said. You notified the police, is that right? A. Yes, sir.

Q. And sometime later that night did the police get in touch with you? A. Yes, sir.

Q. Did you go anywheres with them? A. Yes, sir.

Q. Where, please? A. The 60th Precinct, Coney Island.

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Q. And where is that located in Brooklyn, if you know? A. Coney Island, somewhere.

Q. Did you see your car again after the police notified you late that night? A. Yes, sir.

Q. Where did you see the car? A. At the 60th Precinct.

Q. Can you tell us about what time that was? A. I believe about four o'clock, 4 a. m. in the morning.

Q. When you parked the car at Pine and Fulton Streets, in the Borough of Brooklyn, did you have the ignition locked? A. Yes, sir. 626

Q. When you saw the car again later that day in Coney Island, was the ignition also locked? A. The wires were crossed on it.

Q. The wires were crossed on it? A. Yes, sir.

By the Court:

Q. The District Attorney asked you if the ignition was still locked? A. There was no key there in it. I believe it was locked. 627

By Mr. McGough:

Q. Did you notice any difference in the appearance of the car at the time you saw it on the early morning of the 16th of February, compared with when you saw it last on Saturday night, the 15th at 9 p. m.? A. Yes, it was covered with fingerprint powder.

Q. Yes? A. And the license plates were bent down.

Q. When you say the license plates were bent

628 *Pvt. August A. Hollingsworth—For People—Direct*

down, what do you mean? A. They were bent forward, away from the car.

Q. Both the front and the rear? A. Yes, sir.

Q. Had you left them in that condition? A. No, sir.

Q. What else, if anything? A. Well, the wires were crossed and there were two holes in the car.

Q. Where were the holes, if you remember?
629 A. I believe one was in the right front fender and one was in the hood.

Q. Were there two holes, or one hole and a mark? A. One was like a tear or rip, and one was an indentation. It was not all the way through.

Q. Did you ever have any shells or bullets in that car at any time?

Mr. Solovei: I object to the question.
The Court: Objection overruled.
Mr. Solovei: Exception.
630 The Witness: No, sir.

Q. Did you ever have that car returned to you? A. No, sir.

Q. Have you seen that car recently? A. Yes, sir.

Q. How recently? A. On Friday.

Q. Friday of last week? A. Yes, sir.

Q. And where was the car when you saw it last Friday?

Mr. Carabba: I object to that as incompetent, irrelevant and immaterial, where it was when he saw it.

631

The Court: Objection overruled.
Mr. Carabba: Exception.
The Witness: In the Property Clerk's Office, at Meeker Avenue.

Q. At the Meeker Avenue Garage? A. Yes.
Q. You and I and some men went out and looked at it?

632

Mr. Carabba: I object to that as leading.
The Court: Objection overruled.
Mr. Carabba: Exception.

Q. And that is your car? A. Yes, sir, but the insurance company owns it now.
Q. Is that your car that you had on the 15th of February? A. Yes, sir.
Q. I show you People's Exhibit No. 11 in evidence, and ask you if that is a photograph of your car as it appeared on the 15th day of February 1941? A. Yes, sir.

633

Q. Were those marks that you see on the front of the car there when you last parked that car at 9 p. m. on the 15th of February at Pine and Fulton Streets in the Borough of Brooklyn? A. No, sir.
Q. You say that was a four-door convertible sedan, is that right? A. Yes, sir.
Q. Were the doors in working condition, Mr. Hollingsworth? A. All but one.
Q. All but one? A. Yes, sir.
Q. Which one was not in working condition? A. The right rear door.
Q. What was wrong with the right rear door of your car? A. It used to catch upon opening.

634 *Pvt. August A. Hollinsworth—For People—Cross—Redirect*

Q. You mean it was a little stiff and hard to work? A. Yes, sir.

Mr. McGough: Your witness.
Mr. Solovei: No questions.

*Cross-examination by Mr. Meadow*:

Q. Did the ignition in that automobile also lock the steering wheel? A. Yes, sir.

635 Q. You say that when you left the automobile the ignition was locked, is that right? A. Yes, sir.

Mr. Meadow: That is all.
Mr. Geoghan: No questions by Indovino.

By the Court:

Q. Did you have the key in your pocket when you locked up the ignition? A. Yes.

636 *Redirect examination by Mr. McGough*:

Q. When you left the car there and you put the key in your pocket, did you also have another set of keys hidden on the car? A. Yes, sir.

Q. And where did you have them hidden? A. In the chassis.

Q. And last Friday, when you and I went out to the Meeker Avenue Garage, did you find them hidden in the same spot? A. Yes, sir.

Q. Have you got them in your pocket now? A. Yes.

Q. Where are they? A. Right here.

Q. Are they the keys you took from the car last Friday down there in the garage? A. Yes, sir.

Q. Did you try them in the car and see if they worked? A. I tried them in the trunk lock.

Mr. McGough: I offer them in evidence.

Mr. Geoghan: I object to it.

Mr. McGough: All right, I will withdraw it if there is any objection.

Mr. Geoghan: All right. 638

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DETECTIVE JOHN TRUSCH, Shield No. 860, attached to the Ballistic Bureau, Police Department, City of New York, called as a witness in behalf of the People, and being first duly sworn by the Clerk, Mr. Jehle, testified as follows:

*Direct examination by Mr. McGough:*

Q. You are a detective in the Police Department here in the City of New York? A. I am. 639

Q. And how long have you been a member of the Police Department, Mr. Trusch? A. Over 17 years.

Q. And during that period of time how long have you been a member of the Detective Bureau? A. Since 1938.

Q. And what is your command or detail, please? A. I investigate all the shootings in the five boroughs on my tour of duty; at the scene

640 *Det. John Trusch—For People—Direct*

of the shooting I make a search for spent bullets and discharged shells, and examine clothing.

Q. In other words, you are a ballistic detective, is that right? A. That is right.

Q. Now give this jury a brief description of ballistics, please. A. Well, that is the science of bullets, projectiles in flight, and we make a search for spent bullets and discharged shells and examine clothing; examine firearms.

Q. Now on the 15th day of February 1941,
641 did you receive a call to go to 12th Street and Surf Avenue in the Borough of Brooklyn? A. Yes, I did.

Q. And did you proceed to that particular place? A. I did.

Q. What time did you arrive there, Detective Trusch? A. I arrived there at 12:15 a. m. on February 16, 1941.

Q. Did you see Patrolman Leon Fox there at that time? A. No, he was not there.

Q. How long did you spend at that particular location? A. About 15 minutes.

642 Q. And where did you go from there? A. To the Coney Island Hospital.

Q. And did you see Patrolman Leon Fox at the Coney Island Hospital? A. I did.

Q. Did you examine the clothing of Patrolman Leon Fox at the hospital? A. Yes, I did.

Q. Will you tell us, please, whether or not you examined the winter overcoat of Patrolman Leon Fox on that night? A. Yes, I did.

Q. Will you tell us, please, what, if anything, you found upon examination of the same? A. I found—

Mr. Solovei: I object to this line of testimony on the ground that it is highly improper and incompetent, irrelevant and immaterial, and adds nothing to the People's case. You have the testimony of the doctor here, who says that Fox was shot and killed on the night of February 15, 1941. Nobody disputes it. Nobody questions it, and this line of testimony is only for the purpose of inflaming the minds of the jury. 644

The Court: Wasn't there some cross-examination by one of your colleagues of the doctor as to where the holes were and where the bullets went? Objection overruled.

Mr. Solovei: I take an exception.

Mr. Geoghan: I join in that motion also. Nobody disputes the fact that Patrolman Fox was killed.

The Court: Objection overruled. One of counsel went into an elaborate examination of the location of the bullet holes on the body of the deceased. Now, what counsel had in mind, I don't know. 645

Mr. Geoghan: I will tell you that he certainly does not dispute the death.

The Court: I suppose counsel had an objection in asking those questions.

Mr. Meadow: I did not say, your Honor—

The Court: Objection overruled.

Mr. Meadow: The defendant Rudish excepts.

The Court: Exception to the defense;

proceed. If that cross-examination had not been made, I would not have permitted this line of examination.

Mr. Meadow: I did not hear the testimony.

The Court: You have your exception. Proceed.

By Mr. McGough:

Q. I am talking of the overcoat. A. Yes.

Q. Tell us what, if anything, you found upon examining the overcoat. A. I found a bullet hole on the left side.

Mr. Solovei: I object to this line of testimony.

The Court: Objection overruled.

Mr. Solovei: And upon the further ground, if your Honor pleases, as far as the defendant Malinski is concerned, for the purposes of this record, the defendant Malinski, through counsel, now concedes that on February 15, 1941, the Police Officer Fox was shot and killed in the Borough of Brooklyn.

The Court: Now, Mr. District Attorney, please do not exhibit the coat.

Mr. McGough: I am not, Judge.

The Court: I will permit you to ask what the Officer found on examination of the coat.

Mr. Geoghan: I want to make the same concession on the record on behalf of Indovino. We concede the death of Leon

Fox by a bullet on the night of February 15th.

Mr. McGough: Will they concede that it was fired at a space of not more than four inches?

Mr. Geoghan: We make no such concession.

Mr. Carabba: I make the same concession on behalf of the defendant Rudish, that the Police Officer Fox was killed.

The Court: The District Attorney says 650
he desires to establish that the shooting occurred when the firearm was about four inches from the deceased policeman.

Mr. Geoghan: It does not make any difference where he was shot from.

The Court: I do not know what the District Attorney has in mind.

Mr. Geoghan: You have a dead officer and we concede it.

The Court: All right; proceed, Mr. District Attorney.

By Mr. McGough: 651

Q. Now may I have an answer to that last question. A. There was a bullet hole on the left side front of the overcoat, 27 inches up from the bottom and 9 inches from the left side seam, and it has a powder area of about 3½ inches around that bullet hole.

Q. When you say "powder area", will you tell us in layman's language what that means? A. Powder burn. That shows that the muzzle flash of the gun was close to the material caus-

ing a certain amount of burning and scorching of the material around the hole.

Q. Can you tell us from the examination of the coat how far the muzzle of the gun was held from that particular coat? A. Well, in my opinion, about 6 or 8 inches away.

Mr. Solovei: May I have an objection to that?

653 By the Court:

Q. Will you state that with reasonable certainty? A. Yes, your Honor, I have made considerable amount of tests at the Ballistic Bureau and in my opinion it was about 6 or 8 inches away.

Mr. Solovei: May I have a general objection so I do not have to rise, to this line of testimony, upon the ground that it is improper, and incompetent, in view of my concession, and I object to it and
654 I take an exception.

The Court: You have it.

Mr. Geoghan: I make the same general objection in view of the concession I made, in behalf of the defendant Indovino.

Mr. Carabba: Likewise on behalf of the defendant Rudish.

The Court: You have it. Let the record show that at no time was the garment of the police officer exhibited.

Mr. Geoghan: May it be shown on the record that it was carried in before the jury and placed right under the table.

The Court: There was some object carried in and placed under the table.

Mr. McGough: May the record show that I did not even see it myself, if it please the Court.

The Court: Proceed, please.

By Mr. McGough:

Q. Detective Trusch, will you tell us, please, what, if any other markings, you found on the Patrolman's overcoat. A. There was a bullet hole through the flap on the right front and there was a bullet hole in the rear of the coat; in the rear center. 656

Mr. McGough: That is all.

Mr. Geoghan: No questions.

Mr. Carabba: No questions.

Mr. Solovei: No questions.

Mr. McGough: If your Honor pleases, I am going into some long witnesses at this time and I would like to adjourn now for the day. I think we did a pretty good day's work up till now. 657

The Court: You are not prepared to proceed at this time?

Mr. McGough: I will need an hour and a half or two hours before I can proceed and I do not want to ask the Court to continue that long, with the next witness.

The Court: Have you gentlemen any objection to adjourning at this time?

Mr. Geoghan: No.

The Court: Gentlemen of the Jury, we

658 are about to take a recess until tomorrow morning. I must admonish you as I am required by law, not to discuss the case, either among yourselves or with any other person. Do not permit anyone to speak about this case in your presence. Please refrain from reading anything in the public press if there should be any mention of the case. You must keep your minds open. Do not form or express any opin-
659 ion or conclusion as to the guilt or innocence of these defendants on trial, or either of them or any of them, until the case is finally submitted to you for your consideration after a charge by the Court on the law. You will retire now and return here promptly tomorrow morning at ten o'clock, and we will proceed with the trial at that time. The jury will retire.

(The jury retires from the courtroom.)

The Court: The defendants are re-
660 manded.

Recess until 10 a. m., June 16, 1943.

AFTER RECESS. 10 A. M.

Brooklyn, N. Y. June 16, 1943.

TRIAL RESUMED.

DAVID YELLIN, Sing Sing State Prison, called as a witness in behalf of the People, being first duly sworn by the clerk, Mr. Jehle, testified as follows:

662

*Direct examination by Mr. McGough:*

Q. Now, your name is David Yellin; right? A. Yes.

Q. You gave the clerk your address as Sing Sing Prison? A. Yes.

Q. How old are you Yellin? A. Twenty-eight.

Q. And when were you committed to Sing Sing Prison? A. December 12, 1941.

Q. Sentenced, please, from what County? A. From New York County.

Q. On a charge of what, please? A. Robbery.

663

Q. Was that robbery with a gun or robbery unarmed? A. I think it was robbery armed.

Q. What sentence are you serving in Sing Sing on that charge? A. I am serving from ten to twenty years.

Q. Ten to twenty years in Sing Sing? A. Ten to twenty years in Sing Sing.

Q. In October, 1937, were you convicted of another crime? A. Yes.

Q. Was that assault in the third degree? A. Yes.

Q. Did that arise out of a sex offense against a girl? A. Yes.

Q. Did you go to prison on that charge? A. No.

Q. I want you to look at these three defendants, Malinski, Rudish and Indovino; will you tell this Court and jury whether you are acquainted with those three men? A. Yes; I am.

Q. How long do you know Indovino? A. About two and a half years now.

665 Q. Did you know him under any other name besides Joseph Indovino? A. Yes.

Q. Tell us what it was? A. Joe Tiger.

Q. How long do you know Morris Malinski? A. The Summer of 1940.

Q. Do you know him under any other name besides Morris Malinski? A. Mersh.

Q. Mersh Malinski, is that right? A. Yes.

Q. How long do you know Sidney Rudish? A. Oh, anywhere from 12 to 15 years.

Q. Do you know him by any other name except Sidney Rudish? A. Jake.

666 Q. Jake Rudish? A. Yes.

Q. Did you know a man by the name of Abraham Beitler? A. Yes.

Q. How long did you know him? A. Knew him about 15 years, too.

Q. Did he have any nicknames? A. Yes; Ebbie.

Q. Ebbie Beitler? A. Yes.

Q. Do you recall the day that Patrolman Fox was shot and killed in Coney Island? A. Yes; I do.

Q. Will you give us the date, please? A. February 15, 1941.

Q. With that day in mind, please, can you tell me whether or not you met Indovino about that time? A. Yes; I did.

Q. Can you tell us about when it was, approximately, when it was? A. It was the early part of the week before the 15th, about, I would say, on Tuesday or Wednesday.

Q. At what place did you meet him? A. In front of an Auto Rental Store on First Street between Avenue A and First Street.

Q. Would that be in New York County? A. 668
Yes.

Q. Was anybody there at the time that you met Indovino? A. Yes; I was introduced to him by Ebbie.

Q. By Ebbie Beitler, you mean? A. Ebbie Beitler, yes.

Q. When Beitler introduced you to Indovino, what did he say? A. He said—

Mr. Solovei: I object to this as far as Malinski is concerned.

Mr. Geoghan: Also as far as Indovino 669
is concerned.

The Court: Sustained.

Mr. Carabba: I make the same objection on behalf of the defendant Rudish.

The Court: At this time the testimony is received with reference to Indovino. Do you object to it, Mr. Geoghan?

Mr. Geoghan: I did object to it; yes.

The Court: Your objection is overruled.

Mr. Geoghan: Exception.

Mr. Carabba: I make the same objec-

670 tion, if your Honor please, in so far as the defendant Rudish is concerned.

The Court: Sustained.

Mr. Solovei: Your Honor has not ruled on my objection as to Malinski, I don't think.

The Court: Sustained.

By Mr. McGough:

671 Q. I asked what did Beitler say when he was introducing you to Indovino? A. He said, "Joe Tiger, Davie Yellin, a friend of Slip's."

Q. Who is Slip, please? A. Slip is Nathan Spielfogel.

Q. Was Slip Spielfogel a friend of yours? A. Yes; he was.

Q. Do you know if he was also a friend of Beitler's? A. Yes.

Q. Do you know if Spielfogel was a friend of Mersh Malinski?

Mr. Solovei: I object.

672

A. Yes.

The Court: Overruled. If you know of your own knowledge you may testify.

Mr. Solovei: Exception.

By Mr. McGough:

Q. Now, Mr. Yellin, at that time and at that place, in the presence of Beitler, did Indovino have a conversation with you? A. Yes.

Q. Will you tell the Court what he said, please,

and what, if anything you said to him at that time?

Mr. Solovei: I object to that on behalf of the defendant Malinski.

Mr. Carabba: I make the objection on behalf of the defendant Rudish.

The Court: Sustained in each instance at this time.

A. He called me as I was walking by, and I walked over to him. 674

Mr. Solovei: Your Honor is sustaining the objection. Do I understand that you are sustaining the objection to permit the evidence to go in?

The Court: I am sustaining your objection, sir, and I am allowing this evidence in as to Indovino.

Mr. Morritt: I respectfully ask the Court—

The Court: Whom do you represent?

Mr. Morritt: Rudish, your Honor. 675

The Court: Counsel for Rudish has spoken.

Mr. Morritt: I would like the Court to instruct the jury to disregard any conversation or any acts when your Honor has made a ruling specifically, that the jury will understand, your Honor, that it is not applicable at all to the defendant Rudish and to the other defendant; and that as far as humanly possible, they should strike it from their minds, and that when your

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Honor makes that ruling it is utterly without effect, legally or otherwise, upon the defendants whom I named.

The Court: The jury is so instructed. Proceed.

A. Ebbie called me as I was walking by, and I walked over to Ebbie, and he introduced me to Joe Tiger, saying, "Joe Tiger, Dave Yellin, a friend of Slip's." Then he told me, he says,
677 "This fellow has got something good out in Coney Island." I asked him—he asked me—he told me he wanted me to deliver this message to Slip, and he started to tell me about—then Joe Tigor chimed in, and he told me, he started explaining the trick to me and he told me it was—

Mr. Geoghan: Just a minute. When he says "he" whom does he mean?

A. Indovino.

678 Mr. Geoghan: I object to any conversation between Beitler and this defendant as affecting Indovino.

A. (Continued) I am speaking of the conversation between—

Mr. Geoghan: What is that?

A. (Continued)—I had with Indovino.

Mr. Geoghan: Yes; but he is saying "he". I cannot tell whether he means Beitler or whom.

By Mr. McGough:

Q. Take your time, sit back and relax, and give us the name, and give us the exact words that they used so far as you recall?

Mr. Carabba: May I ask your Honor respectfully to have this witness speak a little louder? We are having trouble hearing him.

The Court: I am having a little trouble hearing him myself. (The Court directs the witness to talk louder and explains to him why he should talk louder.) 680

A. (Continued) Indovino started explaining the details of the job out in Coney Island. He told me that it was the manager of a bank who takes the day's receipts to the bank, a few blocks away. He said, the neighborhood was as dead as Kelsey's Nuts. He says it is a cinch job.

By the Court:

681

Q. Did he say it was the manager of a bank? A. Manager of a theater. He says, the neighborhood was dead, and it would be a cinch job. He told me that the money was escorted by a policeman who walked with him, but they did not have to worry about the policeman, because he was not looking to get killed, he would give up as fast as anybody. He gave a few more details—

Mr. Geoghan: I object to the generality.

682 *David Yellin—For People—Direct*

Mr. McGough: I consent that it be stricken out.

The Court: Sustained. What did he say?

A. He was telling us about what time the money—

The Court: Tell us what he said.

683 By Mr. McGough:

Q. Give us the words, please. A. (Continued) —that he said the money left at about 11 o'clock, left the theater about 11 o'clock. He told them just where to park the car. I don't know Coney Island very well, so I cannot tell you just the street he wanted to park the car on. And then we got through with that conversation. Ebbie told me, he says, "When you see Slip tonight, tell him I want him to go on the thing with me, and tell him what it is all about." I told him I would, and I left.

684 Q. In the time that Indovino spoke to you at that time, did he mention any amount of money?

Mr. Solovei: I object to the question on the ground it is leading.

The Court: Well, yes, it is.

Mr. Solovei: I renew my objection to all of this line of testimony, upon the ground it is highly improper, incompetent, irrelevant, not binding upon the defendant Malinski.

The Court: Sustained at this time.

Mr. Carabba: I make the same motion.

The Court: Sustained as far as your client is concerned at this time.

By Mr. McGough:

Q. You told us a conversation. I am going to ask you at this time, Is that the complete conversation, or do you recall any more details of what Indovino said at that time? A. Yes, I do. Indovino said there would be about a thousand dollars for that night—it was a busy night—there would be about a thousand dollars. 686

Q. Was anything said about whether or not he would go on the venture?

Mr. Solovei: I object to that.

Mr. Carabba: I make the same objection, your Honor, the District Attorney knows that is leading, and highly improper.

Mr. Geoghan: I join in that objection.

The Court: You are really the aggrieved party, and the others are making the objection. 687

Mr. Geoghan: I know that, but I am going to go further. I am going to ask your Honor to counsel the District Attorney not to ask a leading question first, and then withdraw it and ask a general question; because he is putting the answer in the mouth of the witness.

Mr. Solovei: That has been done all day yesterday and it is being done today.

688

The Court: I don't want any speeches from you, I said. Don't you tell me what happened yesterday. If you have an objection, make it.

Mr. Solovei: Yes, I have.

The Court: Make it.

Mr. Solovei: I have an objection. I ask your Honor to instruct the District Attorney not to ask a leading question and then withdraw it, and then ask whether there was any further conversation.

689

The Court: All right now; be seated.

Mr. Solovei: Yes.

The Court: The District Attorney is so instructed.

By Mr. McGough:

Q. Mr. Yellin, do you recall any more of the conversation had between you and Indovino at that time? A. Yes; there was some more conversation. Indovino said that he could not go on that trick because he was too well known out in Coney Island in that section.

690

Q. What do you believe the word "trick" means?

Mr. Solovei: I object to it.

The Court: Sustained as to form.

Q. Do you understand what he meant when he said "trick"? A. Yes.

Mr. Geoghan: That is objected to.

The Court: Sustained as to form, not as to substance, but as to form.

Q. When he mentioned the word "trick", did you understand what he meant?

Mr. Geoghan: I object to it.

The Court: I have just sustained an objection to that question, only as to form.

692

Q. What did you understand him to mean by that particular word?

Mr. Geoghan: Objected to.

The Court: Sustained as to form. It is the same question with a couple of words changed.

By the Court:

Q. Did you ever hear the word "trick" mentioned before? A. Yes. A trick is a holdup.

693

Mr. Geoghan: Just a minute.

The Court: Wait a minute. Strike this out.

Mr. Carabba: I ask it stricken out.

By the Court:

Q. Over what period of time have you heard the word "trick" mentioned? A. Oh, any number of years.

Q. Where, in what circles?

Mr. Geoghan: I object to the question.

The Court: Overruled.

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Mr. Solovei: I object to your Honor's question.

The Court: Overruled.

Mr. Carabba: May I have an objection?

The Court: Overruled.

Mr. Carabba: May I have an exception?

The Court: Yes.

A. Among hoist men, gunmen.

Q. What is a hoist man? A. A hoist man is a
695 holdup man.

Mr. Solovei: I object to your Honor's question and I object to the answer.

The Court: Overruled.

Mr. Solovei: In view of the answer and the question, I ask for the withdrawal of a juror and a mistrial.

The Court: Your motion is denied.

Mr. Geoghan: I do also.

The Court: Motion denied.

Mr. Carabba: May I make the same motion?

696 The Court: Motion denied.

Mr. Carabba: May I have an exception?

The Court: You may. Proceed.

By Mr. McGough:

Q. Did you see Spielfogel that night? A. Yes; I did.

Q. Did you have a talk with him? A. Yes.

Q. Where did you see Spielfogel that night? A. I met Spielfogel in the candy store at the corner of Avenue D and Seventh Street.

Mr. Geoghan: I object to this question, the question and answer; affecting Indovino, whether they met or had a conversation means nothing.

The Court: As far as Indovino is concerned the objection is overruled.

Mr. Geoghan: I except.

The Court: The objection is sustained as far as the other defendants are concerned.

Mr. Carabba: I object on behalf of the 698
defendant Rudish.

The Court: I would be glad to hear you, Mr. Geoghan on the question of law, in the presence or not in the presence of the jury, as you choose.

Mr. Geoghan: No, I make my objection, your Honor has ruled, and I take an exception.

The Court: No, Mr. Geoghan, this is not catch-as-catch-can. I would be glad to hear you, if you have any law you want to present to the Court, if you have any argu- 699
ment you wish to make on this proposition of law; I will exclude the jury and hear you at length.

Mr. Geoghan: No.

The Court: All right, gentlemen, retire a few moments. Don't discuss the case; keep your minds open. If the Court is wrong, the Court will change his ruling. It is not catch-as-catch-can.

Mr. Geoghan: It is a general objection. There is no catch-as-catch-can about it.

The Court: Step out, gentlemen. I will hear counsel on the question of law.

(The jury retired from the room.)

Mr. Solovei: I would like to have the witness excluded while your Honor is hearing the argument on the question of law.

The Court: Sit down. (To the court officer) Take the witness in the side room.

(The witness was taken into the side room and the door was closed.)

(Argument was had in the absence of the jury, and several authorities were examined.)

The Court: Do you still press the objection that it is not binding on Indovino?

Mr. Geoghan: Yes; I do press the objection,

Mr. McGough: Now; so I will understand: Your Honor is ruling that all these conversations had, with any one of these defendants on trial—anything that relates to them, whether in their presence or without, is going to be competent?

The Court: You have not connected the other two yet.

Mr. McGough: I know; I just want a ruling now.

The Court: If you connect them, then I will rule on them. But thus far all of this has no bearing on either Malinski or Rudish.

Mr. McGough: That is understood.

The Court: The only man involved thus far is Indovino.

Bring back the jury.

(The jury were brought back to the room.)

The Court: The objection is overruled and counsel has an exception. The testimony is received only with reference to Indovino. The objection to the testimony is sustained as far as the other defendants are concerned.

Mr. Carabba: Will your Honor instruct the jury.

The Court: I wil make one instruction 704
now that will take care of it throughout the trial.

Mr. Carabba: All right, Judge.

The Court: (To the jury) Where testimony is stricken out or objections are sustained to certain testimony as against any one or more defendants, the jury must disregard that testimony as against the defendant or defendants referred to. If it is received only as against one defendant it must apply only to that defendant, or, as against two defendants, only as against 705
those two defendants. Of course, if it is received as against all defendants, then you will apply it as against all of them. This testimony is received at this time—I say "at this time"—only as against the defendant Indovino. That is the only defendant we are talking about at this time. You gentlemen will bear that in mind. Is that instruction satisfactory to counsel?

Mr. Carabba: Satisfactory, your Honor, as far as the defendant Rudish.

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By Mr. McGough:

Q. Now, Mr. Yellin, when you spoke to Spielfogel at that time, did you mention Indovino? A. Yes.

Mr. Geoghan: Again I object to counsel leading the witness.

The Court: Sustained.

Mr. McGough: Merely preliminary.

707 Mr. Geoghan: Those preliminaries, Judge, simply suggest the answer.

By Mr. McGough:

Q. You told us you had a talk that night, is that right? A. Yes.

Q. Will you please state the conversation, what you said and what Spielfogel said in return to you? A. I met Spielfogel that night in the candy store at the corner of 7th Street and Avenue D, and I delivered the message of the conversation I had had with Indovino and

708 Beitler.

Q. Will you give us the conversation now?

Mr. Solovei: I object as to the defendant Malinski.

The Court: Is there any necessity for that?

Mr. Solovei: I think there is.

The Court: I have already ruled that this testimony is received only as against Indovino. Your record is amply protected. This testimony is not received as against

Malinski or as against Rudish. I cannot make it any more clear than that.

Mr. Solovei: I still think that it is objectionable in spite of your ruling, your Honor.

The Court: I am sustaining your objection. Objection sustained. What else do you want me to do?

Mr. Solovei: As far as I am concerned, your Honor, if you ask me, I say that this witness's testimony at the present time is 710
so prejudicial as against the defendant Malinski, in spite of the fact that your Honor instructed the jury, that I doubt whether or not it could be humanly possible to eliminate it from their minds.

The Court: He hasn't said a word about Malinski or about Rudish thus far. Proceed.

A. I spoke to Natie—I met Natie that night and I told him that Ebbie had something good, Ebbie and another fellow by the name of Joe Tiger—I told him I had been introduced to—had 711
something good out in Coney Island, and gave him the details.

The Court: What did you say to him?

Q. Tell us the words used. A. I told him that it was a soft touch; there was a cop that escorted the day's receipts from a theater to a bank which was a couple of blocks away, and it would be a soft touch in spite of the cop, because the cop would give up quick; it was a lonely neighborhood and he was not looking to be killed. And

712 *David Yellin—For People—Direct*

Spielfogel said to me, he says,—he asked me, "Who was there with Beitler?" So I repeated and told him Joe Tiger.

Q. Did Spielfogel say anything else? A. He told me, he said, "Who? Joe Tiger?" he said, "I would not step with that ginny."

Q. Is that all the conversation that you recall? A. He went on to say that he would not go out on anything that Indovino—that Joe Tiger knew about—he called him Joe Tiger.

713 Q. Now, Yellin, do you recall Saturday night, the 15th of February, 1941? A. Yes; I do.

Q. Where were you at about the hour of midnight or one a. m. that particular day? A. On that Saturday I was playing poker in a candy store on 8th Street between C and D.

Q. Did you see Rudish at any time that night? A. Yes; I saw Rudish at about one o'clock.

Q. Where did you see him? A. I was in the candy store and he called me—he called into the candy store and motioned me to come out.

Q. Did you go out of the candy store after he motioned to you? A. Yes; I did.

714 Q. Did you have a talk with him then? A. Yes.

Q. Will you please tell us what was said? A. He was all excited. He told me that he had just come back from a trick in Coney Island and he says Ebbie—he says Ebbie and Mersh just shot a cop.

Mr. Solovei: I object to that.

Mr. Carabba: I ask it stricken out, your Honor, as incompetent, irrelevant and immaterial.

The Court: The testimony is received

with reference to the defendant that is alleged to have made the statement, and not as to either of the other defendants.

Mr. Geoghan: I object to it as to Indovino.

The Court: As to Indovino, sustained; as to Malinski, sustained.

By Mr. McGough:

Q. Was that all the conversation Rudish had with you at that time? 716

Mr. Solovei: May I ask the latter part of his answer be stricken out?

The Court: As far as Malinski and Indovino are concerned the answer is stricken out. The testimony is received only as against the defendant Rudish.

Q. How long were you talking to Rudish at that time? A. I was talking to him about ten minutes.

Q. Please will you tell us whether there was any more of the conversation? A. Yes; he told me that he had had a narrow escape, they had a tough time getting away, the car was an old shillelah; it went a couple of blocks, the damn thing could not go so they stopped it, jumped out and he ran up on the "L" station and went home by train. 717

Q. What else, if anything—

Mr. Geoghan: I don't know if it is necessary for me to be objecting right along,

but I assume all this testimony is not received as to Indovino.

The Court: Correct.

Q. Do you recall any more of the conversation? A. He asked me whether his wife had been around that night and I told him I had not seen her; and he told me, he says, "Well, I have got to duck the pieces," and he slapped his pocket. He said, "I have got to meet Ebbie and I am going to duck
719 the pieces." He asked me if I needed any money; I told him no, I says I had enough; and I went back in the candy store and he left.

Q. Will you stand up and illustrate and just show us how he slapped his pocket? A. He was wearing a black lumberjack about this long. The pockets were right here. He slapped his pockets. He said, "I got to meet Ebbie and duck the pieces."

Q. Will you describe how the pocket looked where he touched it, please? A. He had two bulges, one on each side, in each pocket, it bulged
720 out.

By the Court:

Q. What is the meaning of the word "pieces"? A. A piece is a gun.

Mr. Solovei: Object to that.

The Court: Overruled.

Mr. Solovei: Exception.

Mr. Carabba: I make the same objection in behalf of the defendant Rudish.

Mr. Geoghan: Same objection as to Indovino.

721

The Court: Overruled.
Exceptions.

By Mr. McGough:

Q. I don't want to lead you, Mr. Yellin, but I want you to tell us whether there was any more of the conversation had that night, as you recall? A. (No answer).

Q. Do you recall the first words that Rudish used when he started to speak to you that night? A. Yes; he said, "Jesus Christ, we just had a narrow escape." Then he went on to tell me about the narrow escape.

722

Q. Will you tell us what words he used, please?

Mr. Carabba: He has already repeated it, your Honor.

Q. Try not to repeat anything you have already given us.

The Court: Proceed.

723

A. He said, "Jees, we just had a narrow escape." He says, "Ebbie and Mersh just shot a cop." Those were the first few sentences he said.

Q. When he mentioned money to you at that time did he show you any money? A. Yes; he took out some money. He said, "I got over two bills here."

Q. How much money was that? A. That is over two hundred dollars.

Q. At about eight o'clock that night did you

724 see—eight o'clock on the evening of Saturday the 15th of February, did you see this defendant Malinski anywheres? A. Yes; I saw that evening on the corner of 7th Street and Avenue D. He was with Spielfogel.

Q. Did he have anything with him?

Mr. Solovei: Objected to.
The Court: Overruled.
Mr. Solovei: Exception.

725 A. What day was that?

Mr. Solovei: I object to the District Attorney giving this witness any answer.
The Court: Overruled.
Mr. Solovei: Exception.

Q. I asked you, Mr. Yellin, if you saw Malinski at any time on the evening of Saturday the 15th of February, 1941, if you remember? A. The evening of Saturday, yes, I saw him about eight o'clock.

726 Q. Was he alone or was he with somebody else? A. He was alone when I saw him.

Q. You said before that he was with Spielfogel. Were you mistaken as to the date? A. Yes; I was mistaken as to the date. I thought you had said Sunday.

Q. Did you see Malinski and Spielfogel together on Sunday the day following the 15th? A. Yes.

Q. On the evening of the 15th how was the defendant Malinski—alone? A. Yes.

Q. At about what hour and what place, please?

A. At about eight o'clock near the candy store at 376 East 8th Street.

Q. Did you see him carrying anything? A. Yes.

Mr. Solovei: Object to that.
The Court: Overruled.
Mr. Solovei: Exception.

A. He was carrying a package in his arm, wrapped up in brown paper.

728

Q. Can you illustrate with your hands the size of the package? A. The package was about that size (showing).

Mr. McGough: Indicating what? Ten inches square? For the record, indicating about ten or twelve inches.

Mr. Geoghan: Looks about that to me.

Mr. Solovei: Object to that and move to strike the answer out.

The Court: Overruled. Motion denied.

Mr. Solovei: Exception.

729

Mr. McGough: You may inquire.

Mr. Solovei: Now, will your Honor direct the warden of the 161st Street Jail —I have subpoenaed records from there —ask him to turn them over to me so that I can cross-examine this witness.

The Court: Let me see these records, please.

(Records handed to the Court).

The Court: Is the Corporation Counsel here? Is he represented? Have you notified the Corporation Counsel of the

fact that this subpoena was served upon you?

The Warden: I was ordered here by Captain Walsh to report to this court.

The Court: Have you notified the Corporation Counsel?

The Warden: I have not, sir.

(The papers were handed to the Court).

The Court: Will Mr. Solovei and the District Attorney please approach the bench?

(There was a conference at the bench participated in by the Court, Mr. McGough, Mr. Solovei and it was later joined by Mr. Geoghan and Mr. Carabba).

The Court: The Court will now hand counsel for the defendant Malinski the records produced here by the Department of Corrections, concerning the witness David Yellin, including an order of the Supreme Court, signed by Mr. Justice Hooley, giving Mr. Solovei the right to interview this witness. You may have that order if you want it. It is a part of the record.

Mr. Solovei: I have a copy of it.

The Court: I will give you the original of it.

Mr. S[redacted]vei: I have a copy. Your Honor, s[redacted] that we will save time, I will proceed on another theory of examination of this witness at this time, and then I will read that which you have just handed over to me, so that I can come

back to this witness and we will save time that way.

The Court: No; you will please finish your cross-examination. And when I say "finish" I mean exactly what the word implies, unless there is some reason for you to ask some more questions. Bear in mind there are three lawyers here and there must be some consideration for the economy of time, without unduly restricting the rights of the defendants. 734

Mr. Solovei: Of course, your Honor realizes you gave me a batch of papers here.

The Court: Proceed. All you have there are just two sheets. The rest are just formal, stereotyped orders or documents; so it will just take you about a minute to go through this whole business.

*Cross-examination by Mr. Solovei*:

Q. Yellin, your first conviction was it in August, 1937? A. October, 1937. 735

Q. Was that where you were charged with rape and took a plea to assault in the third degree? A. That is right.

The Court: Was that rape in the second degree, Mr. Solovei?

Mr. Solovei: I haven't got the record here.

By the Court:

Q. Was that rape in the second degree; that

736 *David Yellin—For People—Cross*

is, having intercourse with a girl, with her consent, under the age of eighteen years? A. Yes, sir.

The Court: Go ahead.

By Mr. Solovei:

Q. And you were placed on probation at that time, is that correct? A. That is right.

737 Q. Later on, your probation was revoked, and you were sent to the Penitentiary, is that correct? A. Yes.

Q. Now, did you in January, 1938, commit the crime of compulsory prostitution in the County of the Bronx? A. No, sir.

Q. This other conviction of robbery was in New York County, in the Court of General Sessions, is that correct? A. That is correct.

Q. Do you know when that was? A. The conviction or the robbery?

Q. When was the crime committed? A. The crime was committed on the 10th of May.

738 Q. When were you convicted? A. I was convicted in December.

Q. You stood trial in that case, didn't you? A. That is right.

Q. Spielfogel was your co-defendant, is that correct? A. That is correct.

Q. What year was that conviction? A. 1941.

Q. The crime was committed on the 10th day of May, 1941, is that correct? A. That is correct.

Q. At that time you held up a man by the name of Sam Sackowitz, and took from him $20 at the point of a revolver, is that right?

Mr. McGough: I object to going into the facts.

The Court: Sustained.

Mr. Solovei: I except.

The Court: Are you familiar with the Kress case? People against Kress?

Mr. Solovei: Yes; I read about it.

The Court: Sustained.

By Mr. Solovei:

740

Q. You have committed more than one crime that night, didn't you? A. No, sir.

Q. More than one holdup, didn't you? A. No, sir.

Q. You held up more than one person, didn't you? A. There was more than one person in the place; yes.

Q. You were examined by a psychiatrist in 1941, in the Fall of 1941? A. Yes; before I was sentenced.

Q. And you spoke to the psychiatrist that examined you, didn't you? A. That is right.

741

Q. Do you know the doctor you spoke to? A. I don't recall his name.

Q. Would you remember his name, if I told it to you? A. I might.

Q. Dr. Cassidy? A. It does not strike.

Q. You lied to the doctor when you spoke to him, didn't you, Yellin?

Mr. McGough: I object to that.

The Court: Sustained.

Mr. Solovei: Exception.

By Mr. Solovei:

Q. Were you ever in Sullivan County? A. Yes.

Q. Were you there in July of 1936? A. Yes, I was.

Q. Was Spielfogel with you then? A. No, sir.

Q. At the present time, Yellin, you are now serving a Sing Sing sentence of from ten to twenty years, having been sentenced for the crime of robbery in New York County, is that correct? A. That is correct.

Q. And when was it for the first time, that you ever told any law enforcement agency the conversation or the statements that you related on the witness stand? A. The first time was the late part of October, 1942.

Q. October, 1942, is that correct? A. Yes.

Q. This was while you were at Sing Sing? A. No.

Q. Where were you? A. I was brought to New York.

Q. Prior to your coming to New York, did you talk to anybody at Sing Sing about it? A. No, sir.

Q. When you were brought to New York where were you brought to? A. I was brought to the Bossert Hotel.

Q. How long did you stay at the Bossert Hotel? A. For several hours.

Q. Did you sleep there over night? A. No, sir.

Q. After you left the Bossert Hotel where were you taken to? A. I was taken to a precinct station in Bath Beach.

Q. How long did you stay there? A. I was there for several hours, too.

Q. Did you sleep in Brooklyn that night? A. No, sir.

Q. Where were you taken that night to sleep? A. I slept at 121st Street Detention Prison.

Q. 121st Street or 161st Street. A. 121st Street.

Q. And Third Avenue? A. I don't know just what avenue it is on; 121st Street.

Q. Is that the place you are presently incarcerated? A. No. 746

Q. How long did you remain at the 121st Street jail? A. About a week.

Q. Now, when you were at the Bossert Hotel, whom did you talk to? A. Well, I spoke—there were detectives there, I spoke general conversation.

Q. Who brought you down from Sing Sing? A. Two detectives.

Q. Do you know their names? A. Yes; James Bell, Detective James Bell and Detective George Lowe.

Q. Bell and Lowe, is that correct? A. That is correct. 747

Q. Did you talk to Bell and Lowe while riding down from Sing Sing, about this case? A. No, sir.

Q. Did they ask you anything about the case? A. No, sir.

Q. And when you were taken off the train, did you go directly to the Hotel Bossert? A. It was not by train.

Q. Come down by automobile? A. Yes.

748 *David Yellin—For People—Cross*

Q. On your way down did you stop to have something to eat? A. No, sir.

Q. Did you drink? A. No, sir.

Q. At the Hotel Bossert, whom did you meet there? A. At the Hotel Bossert, there was Lieutenant James McNally, Detective John McNally, George Lowe, James Bell, District Attorney Heffernan, and one or two others whose names I don't know.

Q. Then you had a conversation with Heffer-
749 nan, is that right, the Assistant District Attorney? A. Yes; I had a conversation with him?

Q. Before you spoke to Heffernan, did you talk the matter over with Lieutenant McNally and Detective McNally? A. No, sir.

Q. No? Said nothing to them, and they said nothing to you about the case? A. I did not speak to them about the case.

Q. So that the first one that you ever spoke to about this case, at all, was Assistant District Attorney Heffernan, when you were brought down from Sing Sing by Detective Bell and Detective Lowe, the latter part of October, 1942,
750 is that correct? A. That is right.

Q. Did you make a statement in writing? A. Not at the hotel.

Q. What? A. I did not make any statement at the hotel.

Q. Well, how long did you remain at the hotel, while Assistant District Attorney was examining you or talking to you about this case? A. I was at the hotel there for several hours.

Q. And while he was talking to you about this case was there a stenographer that took down

your statement? A. I was not speaking to him about the case there.

Q. Well, you met Assistant District Attorney Heffernan at the Hotel Bossert, didn't you? A. That is right.

Q. You did not talk to him about the case? A. No; I did not want to talk to him about the case.

Q. You did not want to talk to him about the case? A. No.

Q. Did not talk to Lieutenant McNally or any of the other detectives about the case either, is 752
that correct? A. Not at that time.

Q. And Assistant District Attorney Heffernan asked you questions for about two or three hours, would you say? A. He did not ask me any questions pertaining to the case, he did not ask me any questions.

Q. Assistant District Attorney Heffernan, at the Hotel Bossert, did not ask you any questions at all pertaining to this case; is that right? A. No; that is not right. He asked me some questions but when I did not answer him he did not ask me any more at that time. 753

Q. That kept on for how long? For about two or three hours? A. For some time. I don't recall just how long.

Q. Was there a stenographer there? A. No.

Q. Did anybody take down any notations of your statement? A. No.

Q. Well, did you go from the Hotel Bossert to the District Attorney's office that day? A. No, sir.

Q. Can you give us the exact day in October that you were at the Bossert? A. I think it was—I am pretty sure it was on the 26th of October.

754 *David Yellin—For People—Cross*

Q. 1942; right? A. That is right.

Q. Do you know what time of day you got there? A. About six o'clock in the evening.

Q. Do you know what time you left Sing Sing Prison with the automobile, with Detective Lowe and Bell on the 26th of October, 1942? A. It was a little after four.

Q. Now, did Assistant District Attorney Heffernan leave the Hotel Bossert on this day in question, and you remain there with the detec-
755 tives? A. There were detectives, coming and going; I don't know who remained and who left.

Q. I am not asking you any particular detectives. I mean you remained with some police officers? A. Yes.

Q. How long after Assistant District Attorney Heffernan left did you stay at the Hotel Bossert with the detectives? A. I don't know that District Attorney Heffernan left.

Q. Was he there all the time while you were there? A. He was there and there were many others there. I did not notice whether he had
756 left. I did not know him. I did not take any more particular note of him than of anybody else.

Q. When he came into the room he introduced himself to you and said, "I am Assistant District Attorney Heffernan", did he not? A. No; he was introduced to me by Lieutenant McNally.

Q. Then you knew he was an assistant district attorney, is that correct? A. Yes.

Q. Did you all stay in one room? A. Yes.

Q. One large room? A. There were two rooms, but we all stayed in the living room.

Q. Was there a table there? A. Yes; there was.

Q. Were you seated at a table with Assistant District Attorney Heffernan? A. No; I was sitting on a couch.

Q. Was he sitting on a couch with you? A. Yes; he was sitting on a couch.

Q. And while on this couch, as you described, you both sitting there, was it then that he asked you these questions or some questions about this case? A. Yes; about that time.

Q. How long would you say that Assistant District Attorney Heffernan was actually asking you 758
questions before he left? A. I don't know how long it was.

Q. Would you say it was more than an hour? A. I mean I cannot say at all. I don't know just how long he asked me questions or whether it was for two minutes or for ten minutes or how the questions ran.

Q. You paid no attention to the time? A. Not particularly.

Q. Was Assistant District Attorney Heffernan actually in the room when you arrived or did he come after you came? A. I would not say for 759
certain.

Q. Do you know whether or not Lieutenant McNally and Detective McNally and some of the other detectives were actually in the room at the Hotel Bossert when you arrived from Sing Sing with Detectives Bell and Lowe? A. Were they at the Hotel Bossert with me?

Q. No; were they there when you arrived? Were they in this room when you got there? A. Yes.

760 *David Yellin—For People—Cross*

Q. So that it was shortly after your arrival that Assistant District Attorney Heffernan came into the room? A. I don't recall whether he was there or he came in.

The Court: Is this at all important, Mr. Solovei?

Mr. Solovei: Yes; it is important.

The Court: If it is, I am not going to restrict you.

761 Mr. Solovei: I think it is very important.

The Court: Proceed.

By Mr. Solovei:

Q. Did you ever sit at a table on that particular day, on the 26th of October, 1942, at the Hotel Bossert, and talk to somebody about this case who made some notes or there was a stenographer present? A. No, sir.

Q. Can you tell us what time that evening you left the Bossert? A. It was late that evening; I
762 don't know exactly.

Q. After 12 o'clock? A. I did not have a watch with me.

Q. Would you say it was after 12, the best of your recollection? A. I don't know whether it was after 12 or before 12.

Q. Did you have your dinner at the Hotel Bossert? A. Yes.

Q. With the detectives? A. Yes.

Q. Now, can you tell us when it was for the first time that you actually told anybody at all about

this case? What day was it? A. It was the same day I came down.

Q. Was it while you were at the Hotel Bossert? A. No.

Q. Was it while you were at some police station? A. Yes.

Q. What police station? A. Bath Beach.

Q. Would you say that was in the late hours of the night or early hours of the morning that you made such statement to somebody? A. It was in the very early hours. 764

Q. In the morning? A. Yes.

Q. Who was it you made that statement to? A. District Attorney Heffernan.

Q. In other words, District Attorney Heffernan again came down to see you at the Bath Beach police station in the early hours of the morning, and you made some statement to him; is that correct? A. Yes.

Q. Was there a stenographer present? A. Yes.

Q. You saw the stenographer take down what you said? A. Yes. 765

Q. He asked you a lot of questions, and you made a lot of answers, is that correct? A. That is correct.

Mr. Solovei: I now demand a copy of the stenographic record, please.

Mr. McGough: May I have the record note that I am gladly turning over this statement to counsel, five pages.

The Court: First, please, turn it over to the Court.

Mr. McGough: I think that is the better procedure.

The Court: That is the procedure laid down in the Walsh case.

Mr. McGough: I know the rule, but I don't want it to appear that I have any objection at all. In fact, I will offer it, if there is no objection, in evidence.

The Court: No, no; never mind that. Strike that remark from the record. Mark this for identification, please.

(Marked People's Exhibit C for identification.)

The Court: The Court will turn over to Mr. Solovei a manuscript which runs from page 8 to page 14 inclusive, which purports to be a statement made by this witness to Assistant District Attorney Heffernan, at 1:50 a.m., October 27, 1942. (Handing).

By Mr. Solovei:

Q. This statement was taken, according to the People's Exhibit C for identification, just handed me by the Court, at 1:50 a.m., on October 27, 1942; is that correct? A. That is correct.

Q. And there were a number of detectives present at the time? A. Yes, sir.

Q. Were you taken to a room, a detective's room over at this precinct and made this statement? A. Yes, it was a detective's—

Q. After this statement was made by you on October 27, 1942, were you further examined by

Assistant District Attorney Heffernan or any of the police officers? A. No, sir. 769

Q. And if I understood you correctly, after you made this statement on October 27th, 1942, you made no further statement to anybody in reference to this case; is that correct? A. Oh, yes, I did—I didn't get your question clearly.

Q. You made other statements? A. Yes.

Q. Now, when was it after October 27th, 1942, that you made another statement, and to whom? A. Well, there were several—a few—a couple of occasions I made statements to Mr. McGough. 770

By the Court:

Q. Was this statement made, this first statement made on the very night when you were brought down from Sing Sing? A. Yes.

Q. Same day? A. Yes.

By Mr. Solovei:

Q. Did you make any other statement to Assistant District Attorney Heffernan other than this one that I have here of October 27th, 1942? A. No, sir. 771

Q. Did you make any other statement to the detectives in writing, or did they take your statement down, other than this statement that I have here of October 27th, 1942? A. No, sir.

Q. So that the other statements that you now say were made were made to Assistant District Attorney McGough, is that correct? A. Yes; that is correct.

Q. How soon after the statement that you

made on October 27, 1942, did you make your statement to Mr. McGough? A. About four or five months.

Q. Four or five months after October? A. Yes.

Q. Would you say it would be about February of 1943? A. About.

Q. How many statements did you make to Mr. McGough, if you know? A. We just talked about the case.

773 Q. He asked you questions and you made answers? A. Yes.

Q. Was there a stenographer there? A. No, sir.

Q. Nobody took down your answers? A. No, sir.

Q. Was Spielfogel brought down with you in October of 1942? A. No; he was not brought down with me.

Q. Spielfogel was up in Sing Sing, with you, wasn't he? A. Yes.

Q. Was it later on that Spielfogel was brought down, if you know? A. No, Spielfogel had al-

774 ready—Spielfogel was—

Q. Was it later on? A. No.

Q. Was Spielfogel brought down before you were brought down? A. Yes.

Mr. Solovei: In view of your Honor's ruling that you want me to conclude, may I have a minute?

The Court: You mean you want to read the statement?

Mr. Solovei: Just glance through it fast.

The Court: No. Take your time and read it all. You have a right to read every sentence of it. You may sit down, Mr. Solovei and relax and take your time and read every word of it, if you choose.

(Mr. Solovei sits down and reads the statement.)

By Mr. Solovei:

Q. Mr. Yellin, when you made this statement to the District Attorney, on October 27th, 1942, you told him everything you knew about this case, didn't you? A. No. 776

Q. You withheld something, did you? Yes or no? Did you withhold anything? A. Yes.

Q. Have you told everything you know about the case here as you testified to here? A. Yes; so far.

Q. You mean you still withhold some testimony from the District Attorney here at this trial? A. No, sir.

The Court: Are you finished with the statement? 777

Mr. Solovei: At the present time; yes.

The Court: All right. Return it to the District Attorney.

Mr. Carabba: May we look at it, Judge, with your permission?

The Court: Yes, indeed. I beg your pardon, Mr. Carabba and Mr. Geoghan. Any counsel may have access to it.

(Statement handed to Mr. Geoghan who hands it to Mr. Carabba.)

778 By Mr. Solovei:

Q. Do you know how many visits you made to the District Attorney's office? A. No; I don't.

Q. Did you make more than ten? A. Yes.

Q. According to the records that were turned over to me here and my associates looked at, they tell me you made about sixty visits. Would you say that is true? A. I would not know exactly how many.

779 Q. What? A. I would not know how many visits I made to the District Attorney's office.

Q. Do you remember the first time you went to the District Attorney's office? A. No.

Q. Was it shortly after you made the statement of October 27, 1942? A. It was a little while after.

Q. You never went back to Sing Sing after that, did you? A. No.

Q. You were kept right here in New York? A. Yes.

Q. You were kept at the 161st Street jail on Third Avenue? A. Yes; I was at the 121st

780 Street jail.

Q. A short time? A. Then, the 161st Street jail.

The Court: Will counsel step up to the bench, please, one from each camp.

(Conference at the bench participated in by the Court, Mr. Geoghan, Mr. Carabba, Mr. McGough and Mr. Solovei.)

By Mr. Solovei:

Q. On November 2, 1942, you were at the

Fifth District Prison, is that correct? A. November what?

Q. November 2nd, 1942? A. I think I was still at the Fifth District then.

Q. On November 4th, 1942, you were taken from the prison about 3:45 p.m. and returned about 11:30 p.m. Do you remember that day? A. What prison, was that?

Q. It does not say here from what prison—I assume—on November 4, 1942 what prison were you in? A. I think I was in the Eighth 782
District.

Q. The Eighth District where you are now? A. Yes.

Q. You were taken from there at 3:45 p.m. and returned 11:40 p.m., where were you? A. I was being questioned by police.

Q. Where did they take you? A. They took me to the Hotel Bossert.

Q. How long did you remain there? All the time? A. Yes.

Q. You had your dinner at the Hotel Bossert? A. Yes.

Q. Did you sleep at the Hotel Bossert? A. 783
No, sir; you just said that I was returned at 11:30.

Q. On November 5th, 1942, you were again taken from the prison, and you were not returned. Where were you taken to? A. I was being questioned by the police.

Q. Where were you on November 5th, 1942 being questioned by the police? A. You say we were not returned at all that day?

Q. Do you know whether you were returned? A. You are telling me.

Q. I am now asking you were you returned? A. I was returned the next morning, the following morning.

Q. When were you returned the following morning, do you know? A. About 6 o'clock in the morning.

Q. Were you at the Hotel Bossert again? A. No, sir.

Q. Where were you then? A. Monticello, New York.

785 Q. They took you up to Monticello, N. Y.? A. Yes.

Q. You had some case pending up in Monticello, N. Y., did you not? A. No, sir.

Q. Did you have some matter pending up in Sullivan County? A. No, sir.

Q. How did you go to Monticello, N. Y.? By automobile? A. Yes.

Q. On November 6th, 1942, you were again taken from the prison, and you did not return on that day, did you? A. I don't recall.

Q. Well, if the records here show that you did not return that day until the following
786 morning, on the 7th, would that refresh your memory? A. No; not that particular occasion.

Q. Where were you on that day, do you know? A. If I was out I was being questioned by the police.

Q. Were you at the Hotel Bossert? A. Likely.

Q. All of your visits and all of your questions by the police and by the District Attorney were held at the Hotel Bossert, weren't they? A. By the District Attorney and by the police?

Q. Yes. A. No; not all of them.

Q. How many times did you dine at the Hotel Bossert with the police, have your dinner, luncheS? A. Every time I went there.

Q. You say it was at least twenty-five or thirty times? A. I would not say.

Q. Did you ever go out from the Eighth District Prison where you are now incarcerated, with a detective or somebody else, to visit some members of your family? A. Yes.

Q. How many times did that happen? A. I visited my home twice. 788

Q. Twice? A. Yes.

Q. Did you visit any of your girl friends? A. No, sir.

Q. Is Martha Yellin, your mother? A. No, sir.

Q. Sister? A. No, sir.

Q. What relation is she? A. She is my girl.

Q. Did you visit her? A. No, sir.

Q. Is Anne Kamer related to you? A. Yes.

Q. What relation is she? A. My sister.

Q. Did you visit her at 971 East 180th Street? A. No.

Q. Is that where she lives? A. Yes. 789

Q. While you were being held at the 161st Street jail, where you are now at, you are permitted, aren't you, to have visitors every day there, is that correct? A. Except Sunday.

Q. As many visits as you want, is that correct? A. As many visitors as the District Attorney's office gives permission to come to see me.

Q. You have been given an unlimited amount of visits, isn't that correct? A. No.

Q. Well, there were times, weren't there,

when you had two and three visits a day there, isn't that so? A. I had two and three visitors at the same time, yes.

Q. Members of your family? A. Yes.

Q. Now, Yellin, you are trying to help yourself, aren't you? A. What do you mean by that?

Q. You have heard that expression before, haven't you? A. Make yourself clear.

Q. You are trying to help yourself because
791 you have got a ten to twenty year sentence, and you are trying to help yourself by lessening your sentence, aren't you? A. In what way can I do so? In what way can I lessen my sentence?

Q. You mean you don't know how you can help yourself? A. I have never been told anything about my sentence being lessened by anybody.

Q. Never been told that at all? A. No.

Q. Never heard that at all before by people testifying in criminal cases, have you? A. No, sir.

792 Q. You would not hesitate in committing perjury if you thought that your sentence would be reduced substantially, would you? A. What was that?

(Question read.)

A. I would not commit perjury for that.

Q. You would not commit perjury to help yourself? A. No.

Q. What? A. I would not commit perjary to help myself in a situation like this.

By the Court:

Q. What do you mean by that? A. Why, there are men's lives at stake here.

By Mr. Solovei:

Q. Do you remember talking to me? A. Yes.

Q. Do you remember when it was that I visited you? A. What date?

Q. Yes. A. No; I don't recall the date.

Q. Do you remember the month? A. It was last month. 794

Q. Last month? A. Yes.

Q. You mean the month of May, is that right? A. Yes; about that.

Q. Do you remember my being with one of the other attorneys in this case who visited you? A. Yes; that fellow there (pointing).

Q. Mr. Meadow. Do you remember my telling you that I am the attorney for one Morris Malinski? You remember that? A. Yes.

Q. And you remember my asking you whether or not you would like to talk to me or I would like to talk to you about this case? A. You told me you wanted to talk to me about the case; yes. 795

Q. Do you remember saying to me that "I know nothing about Malinski that would help him or hurt him"; do you remember that? A. No, sir.

Q. Don't remember saying that? A. No, sir.

The Court: The question, of course, assumes that he did say it and you are asking him whether he remembers that. That is

not the proper way to put the question. Ask him he made such a statement.

Q. I will ask you now, did you say to me that as far as you know that you know nothing at all about Malinski that would help him or hurt him? A. No, sir.

Q. You remember—

The Court: No— "Did you?"

797 Mr. McGough: I object to the form.

Mr. Solovei: I will reframe it.

By Mr. Solovei:

Q. Didn't you say to me that the District Attorney is your lawyer and you refused to further talk to me? A. Yes.

Q. Now, on the 15th, when you say you were playing poker in this club house you remember— A. It was not a club house; it was a candy store.

Q. Who was it you were playing poker with? A. There were several men there.

798 Q. Were they some of your friends who were there that you went out and did stickup jobs with?

Mr. McGough: I object to that.

The Court: Overruled.

A. No, sir.

Q. How soon after the 15th of September, or February, rather, was it that you met Malinski? A. After the 15th of February?

Q. Yes. A. I met him in the summer of 1940.

Q. I am talking about the 15th of February, 1941, how soon after that? A. Oh, how soon after? I saw him the next day.

Q. The next day you say was on a Sunday? A. That is right.

Q. Where was it you say you saw him? A. At the corner of 7th Street and Avenue D. He was with Spielfogel.

Q. Talking to Spielfogel? A. Yes.

Q. On the street? A. They were outside the candy store.

Q. How far away were you at the time? A. I walked over and said "hello" to them and went inside the candy store.

Q. Just said "hello" and went away, is that correct? A. Yes.

Mr. Solovey: That is all.

*Cross-examination by Mr. Geoghan*:

Q. Now, Yellin, how many days before February 15, 1941, was it that you met Indovino as you say? A. About three or four days.

Q. Would that be about February 11th or the 12th? A. It was either on a Tuesday or Wednesday; I don't know exactly that date.

Q. On Tuesday or Wednesday prior to February 15th? A. 15th.

Q. What time of day did you meet him? A. I would say it was between 5:30 and 6:00.

Q. You are sure it was a week day, whether it was Tuesday, Wednesday or any other? A. Yes.

Q. Where was it that you met him? A. He was

802 *David Yellin—For People—Cross*

standing in front of an auto rental store on First Avenue between A and First Avenue.

Q. At that time was he alone? A. He was with Beitler.

Q. How long before that time had you met Indovino? A. I met him right there.

Q. Was that the first time you ever met him? A. That is right.

Q. Never knew him before that date? A. No, sir.

803 Q. Then, I assume, it was Beitler that introduced you; is that true? A. That is right.

Q. Now, then, you say a conversation then ensued between you and Beitler and Indovino, at that time; is that right? A. That is right.

Q. Who was it that introduced the subject of the conversation? Who spoke first about it? A. Ebbie.

Q. That is Beitler? A. Yes.

Q. What did he say to you? A. He said "he got something good out in Coney Island. I want Slip to go on it with me." He told me he had

804 something good out in Coney Island and he wanted Slip to go on it, and then told Indovino to tell me about—give me the details of the thing so I could tell it to Spielfogel.

Q. How long before that day was it that you first met Beitler? A. That I first met Beitler? I know Beitler anywhere from twelve to fifteen years.

Q. He was an old friend of yours? A. I know him, yes, very well.

Q. Now, it was Beitler that made that statement, was it, about the good thing some place? A. Yes.

Q. Beitler. Did he tell you what place? A. Beitler told me it was in Coney Island, he was a good thing out in Coney Island.

Q. Is that all he said? A. Then he told Indovino to give me the details.

Q. He said what?

The Court: Speak louder.

A. He told Indovino to give me the details.

Q. That is, this Joe Indovino sitting here? A. 806
Fellow sitting there.

Q. At the end? A. Yes.

Q. Tell us what details he gave you? What did he say to you? A. He told us it is a good touch, says there will be about a grand there, and says it is the manager of a theater who takes the day's receipts to the bank a couple of blocks away and the couple of blocks they walk it is as dead as Kelsey's; and he says, "The cop will give up quick because he ain't looking to get killed, and" he says, "it will be an easy touch."

Q. You are sure he told you it was the manager 807
of a theater? You are sure of that? A. Yes.

Q. As a matter of fact when you made the statement first to the District Attorney did you tell him that Indovino said it was the manager of a theater? A. Yes.

Q. Is that the first thing you told him? A. No; I told him—I did not tell him everything then.

Q. I did not ask you that. I say, when the District Attorney asked you questions with respect to this case, on October 25th or thereabouts, did you tell him that Indovino said that the soft

808 *David Yellin—For People—Cross*

touch or whatever it was could be made from the manager of a theater? A. No.

Q. What did you tell him? A. I told him I did not know.

Q. Didn't you tell him it was a payroll? A. Yes.

Q. In other words, that Indovino told you that the soft touch in Coney Island was a payroll? A. No, sir; Indovino told me that the touch was the day's receipts.

809 Q. Talk up. A. Indovino told me it was a day's receipts from a theater.

Q. When the District Attorney asked you what Indovino said, didn't you say Indovino said it was a payroll, and repeat that three or four times? A. Yes; I did say that.

Q. Now you tell us that you said that Indovino told you it was the manager from a theater in Coney Island? A. Yes.

Q. You learned that later, didn't you? A. I knew it at that time. Payroll in my language is the same thing. It is money.

810 Q. A payroll is the same thing as taking the proceeds— A. The day's receipts—it is the money that is carried.

Q. You say that in your opinion, because you look upon robbing a payroll as just the same as receipts obtained in a theater, which a manager is about to deposit; is that right? Is that your explanation? A. Yes.

Q. All right. That is enough for me. You read about this case, didn't you, after it happened? I mean about the robbery and the murder? A. Yes; next day.

Q. The statements that you read in the news-

papers contained the accounts about the shooting of Patrolman Fox; isn't that right? A. Yes; I read about the cop being killed out there.

Q. You have been discussing it? A. What?

Q. You have been discussing it since you came down here from Sing Sing prison, with the detectives and the Assistant District Attorney, haven't you? A. No, sir; I spoke to the District Attorney about it.

Q. And the detectives also; isn't that so? A. Yes. 812

Q. And during the course of those conversations that you had with the District Attorney, or Mr. McGough, or Mr. Heffernan, and the detectives; of course it was frequently mentioned that the robbery was in connection with the proceeds of a—I mean to say, the receipts taken in at a theater down there; that has been discussed frequently? A. I told them, yes.

Q. You told them? A. Yes.

Q. At the time that you first met Indovino, which you place at some two or three days before February 15, 1941, were you employed? A. Yes. 813

Q. Where were you working? A. I was working at the Allied Gymnasium Equipment Company, 80 York Street, Brooklyn.

Q. What time did you finish work on that day? A. We quit work at 4:30.

Q. Can you remember on that particular day you quit at that time? A. Yes.

Q. Where did you go from ther? A. Washed up, got dressed, and then I took the subway.

Q. What subway did you take? A. 8th Avenue subway.

814 *David Yellin—For People—Cross*

Q. And where did you get off? A. Got off at Houston Street.

Q. What time was that about? A. About 5:30.

Q. How far from the subway station do you live, I mean this Houston Street? A. From Houston Street, let us see, it is about, say, it is about eleven blocks.

Q. Is that your regular station to get off or did you just happen to get off at that station that day? A. No; that is my regular station.

815 That is the way I went to work and came from work.

Q. That is the nearest subway to your house? A. That gets me closest to 80 York Street.

Q. You say it is about eleven blocks away? A. Yes.

Q. Now, when you got off at the Houston Street station on that day, that is this date in February, 1941, was it your intention to proceed immediately to your home? Was that your intention at that time? A. Yes.

Q. You just happened to see Indovino and Beit-

816 ler? A. I walked past, yes; I walked down First Street.

Q. I mean, you just happened to see them there? A. Ebbie saw me and called me over.

Q. They called you over? A. Yes; Ebbie.

Q. Ebbie? That is Beitler? A. Beitler, yes.

Q. You went over? A. Yes.

Q. That is when you had this conversation? A. That is right.

Q. That is the last time you ever saw Indovino, isn't it? A. No; I saw him afterwards.

Q. When? A. I saw him on 7th Street and

Avenue D, in the company of another fellow whom I don't know.

Q. When was that? A. This was a couple of weeks after.

Q. Couple of weeks afterward? A. Yes.

Q. That would be some time in February or the early part of March? A. Early part of March.

Q. Avenue D in New York? A. Yes; 7th Street.

Q. Was it on Sunday or a week day? A. I think it was on Saturday night. 818

Q. Was he alone at the time? A. He was with another fellow.

Q. Do you know who that was? A. No, sir.

Q. Did you meet him on the street or in some— A. I saw him passing by; I did not speak to him.

Q. Just walking along the street? A. Yes.

Q. What time of the night was it? A. Early part of the evening.

Q. About what time? A. I don't know what time it was.

Q. Well, when you say the evening, do you mean before six o'clock or after six o'clock? 819
A. I don't know what time it was.

Q. Haven't you some idea? You saw him? A. Yes; I saw him.

Q. Was it light or was it dark? A. Dark.

Q. Isn't it true, as a matter of fact, that you never saw Indovino in your life until you were brought into the Bossert Hotel here, after his arrest on October 24, 1942? A. No, sir.

Q. That is not the truth? A. No, sir.

Q. In the month of February, 1941, and particularly on the day you say you first met In-

dovino, what kind of work were you doing? A. I was employed as a machinist's helper.

Q. How long had you been employed as a machinist's helper prior to that date? A. Approximately six months.

Q. What was the name of your employer? A. Mr. Gartner.

Q. What was the exact address? A. 80 York Street.

Q. Just to clear up a matter, when you said
821 you were working at 80 York Street for Gartner for about six months, you refer to the early part of 1941, and, I assume, the latter part of 1940; is that right? A. That is right.

Q. Now, you knew about this crime, as you say, from practically its very inception, didn't you? From its very beginning you knew about it? A. That is right.

Q. According to your testimony you knew there was something hatching about it before it was committed? A. Yes.

Q. That was in February of 1941? Correct?
822 A. What was that?

Q. When you first heard about it—when Indovino and Beitler spoke to you about it? A. Yes.

Q. How long after this patrolman was killed did you know about it? A. I knew it the same night.

Q. That, you say, you got from Rudish over in New York? A. Yes.

Q. And from that time until October of 1942 you never told any public official or any law enforcement agency anything about it? A. No, sir.

Q. And not until you were brought down here by two detectives sent up to Sing Sing prison; is that right? A. That is right.

Q. Then you readily told everything you knew? A. No, sir.

Q. You told them that same day? A. I told it to them—yes—I did—I told it.

Mr. Geoghan: That is all I have for this witness.

The Court: Any additional cross-examination? 824

Mr. Geoghan: Pardon me. Just a question or two. I don't want to repeat all Mr. Solovei has gone over. That is why I have just confined myself to these questions.

Q. But I would like to ask you a couple of questions now along the line suggested by Mr. Solovei. No promise has been made to you by the District Attorney, of course? A. No, sir.

Q. For anything you might testify to here? A. No. 825

Q. He has not even intimated that he might say a good word in your behalf? A. No, sir.

Q. You don't expect any help at all for what you are doing, do you? A. No, sir.

Q. You say you would not hesitate to commit —or you say you would not commit perjury even if you thought it might help you and reduce the time you are now serving in prison—you would not do that? A. No.

Q. You would commit a robbery but you would stop at perjury; is that right? A. Yes.

826 *David Yellin—For People—Cross*

By the Court:

Q. Wouldn't you testify falsely against a man on trial for his life if you could cut your sentence down? A. No, sir.

The Court: All right.

*Cross-examination by Mr. Meadow:*

827 Q. That trial in New York County wherein you were convicted of robbery, did you take the witness-stand there?

Mr. McGough: Object to that.
The Court: Sustained.

By Mr. Meadow:

Q. This girl friend of yours, by the name of Martha Yellin, is her true and correct last name Yellin? A. No, sir.

Q. In other words, she adopted your name, is
828 that correct? A. That is correct.

Q. When she visited you in the—did she visit you in the 8th District prison? A. Yes.

Q. When she visited you there were you ever alone with her? A. If there were no other visitors. We sat behind the screen, but always the officials of the prison are always on hand.

Q. Was she ever present—

Mr. McGough: I am going to object to this unless I know the materiality of it. It is incompetent, immaterial and irrelevant. It is not germane to the issues in

this case. It does not go to credibility in my opinion.

Mr. Meadow: I think it is very important to show whether or not he was being favored while incarcerated up in the 8th District prison.

Mr. McGough: Object to that. It is not important whether he was or not, I submit.

The Court: Yes; it may have some materiality. He stated that he had visitors, sometimes two and three a day, with the permission of the District Attorney, up in the prison. Is there anything more you can get along that line? 830

Mr. Meadow: Yes.

By Mr. Meadow:

Q. At any time when you left the 8th District prison, outside the prison, was Martha Yellin there? A. On the outside of the prison?

Q. Yes. A. I met her once when she was coming to visit me, and I saw her outside the prison. She went back home. 831

Q. Did you speak with her when you met her outside the prison? A. I spoke to her for a minute.

The Court: I am going to let you ask the question, Mr. Meadow, as to whether he testified in the case involving the robbery charge. I will let you ask that question.

Q. Did you testify in New York County in the

case wherein you were a defendant, for robbery in the first degree? A. No, sir.

Q. Did you ever see Martha Yellin at the Hotel Bossert or near the Hotel Bosert? A. No, sir.

Q. Did you introduce Rudish to Malinski at any time? A. Yes.

Q. Will you tell us when that was if you know? A. It was the early Fall of 1940.

Q. Could you tell us where that was if you
833 know? A. It was on the corner of 7th Street and Avenue D.

Q. You remember that incident pretty well, don't you? A. Well, because I hang out on that corner.

Q. Can you tell us who else was present when you introduced Rudish to Malinski, if you know? A. Spielfogel was there and there was a couple of other fellows there, too.

Q. You say that was in 1940, is that right? A. That is right.

Q. It was in the Fall? A. Yes.

Q. You remember what you were wearing?
834 That is to say, were you wearing a hat and coat, do you remember? A. No, sir.

Q. Will you say it was a cold day? A. I would not remember whether it was cold that day or not.

Q. You would not remember the clothing the other people were wearing there, would you? A. At that particular time, no.

Q. Now, you testified that when Rudish saw you on February 15, 1941, he was wearing a black lumberjack; is that correct? A. That is right.

Q. Was he wearing a hat? A. He was wearing a cap.

Q. Did he have an overcoat on? A. No, sir.

Q. Did he have a top coat on? A. No, sir.

Q. Do you remember whether or not he was wearing a tie? A. No, sir.

Q. Is it your answer you don't remember or he was not wearing a tie? A. I could not see whether he was wearing a tie; his lumberjacket was buttoned.

Q. Did you say he called you out of the candy 836
store to speak to you on that night? A. That is right.

Q. Do you know whether or not anyone else was present at that time that he told this to you? A. No, sir; there was no one else with us.

Q. Do you recall at this time whether or not anyone in the candy store saw him motion for you to come out of the candy store on that night? A. I don't know whether anyone else saw him. He called me and I came out.

Q. When you say he called you, did he motion for you to come out or did he call you by 837
name? A. He called me by name, I turned around, and he motioned for me to come out.

Q. Isn't it a fact that you introduced Malinski to Rudish in the Spring of 1941? A. No, sir.

Q. Do you remember where you introduced the defendant Malinski to Rudish? A. Yes; on the corner of 7th Street and Avenue D.

Q. Do you recall at this time who was present there other than Malinski, Rudish and yourself? A. There was Spielfogel was present there, too.

838 *David Yellin—For People—Cross*

Q. You said that this lumberjacket, is that accurate? A. That is right.

Q. Now, did it have two pockets up here (indicating)? A. Had two pockets here.

The Court: Indicating the lower part.

Q. Would you know offhand whether it was buttoned or open at the time you saw him? A. Pockets?

839 Q. No; the lumberjacket itself? A. The lumberjacket was zipped up.

Q. Do you recall at this time what you were wearing at that particular time? A. Yes.

Q. What? A. I was wearing a suit.

Q. No coat or hat? A. No, sir.

Q. You recall whether or not it was a warm evening, warm night or cold night? A. It was pretty cold. There was a couple of light flurries of snow that night.

Q. It was snowing and cold? A. Yes.

Q. You were wearing just a suit and Rudish was wearing just a lumberjacket and a pair of
840 pants on and hat on, is that right? A. He had a cap on.

Q. With a cap on, is that right? A. Yes.

Q. Now, you are definite, are you not, that Rudish told you that he had a couple—he had over two bills with him? A. Yes.

Q. You are sure about that? A. Yes.

Q. No question about that? That is the exact words? A. Yes. "I have two bills". He said, "I got over two bills for my end."

Q. At that time what else did he say with reference to giving you money? Do you re-

member the exact conversation? A. He took out the money and said to me, "Do you need any?" I said to him, "No." I said, "I am doing all right." I told him I did not need any.

Q. He did not owe you any money at this time, did he? A. No, sir.

By the Court:

Q. You say "over two bills" is an expression which means "over two hundred dollars"? A. Yes; a bill is a hundred dollars. 842

Mr. Morritt: May I object to the Court's question?

The Court: Overruled.

Mr. Morritt: Exception.

By Mr. Geoghan:

Q. Do you remember when you were down in the police station when you made the statement to Mr. Heffernan? A. Yes.

Q. Do you remember they showed you certain photographs? A. Yes. 843

Q. Did you at that time make a mistake in identifying one photograph as Beitler instead of Indovino, or vice versa? A. I did not get that.

Q. I say, do you recall, when a certain photograph was shown to you, you said it was Beitler, when it was Indovino? A. Yes; that is right.

Q. You made a mistake? A. Yes.

Q. It was corrected later? A. I took a look at the pictures and I said, "Oh, no, that is

844 *David Yellin—For People—Cross*

Beitler," because there is a similarity between them.

Q. You and Rudish were very close friends, were you? A. Yes, sir.

Q. Do you know of any particular reason why after this crime was committed in Coney Island that Rudish should come over to you and tell you all about it? Any special reason for that? A. He always—we always told each other those things—

845 Q. I want to hear this. Talk up loud.

The Court: Talk up loud, please. (To Mr. Geoghan) Do you want to press the question, Mr. Geoghan?

Mr. Geoghan: Oh, yes. I want to know why he says Rudish came over and told him about it.

Mr. Carabba: Object to that on behalf of Rudish.

The Court: Overruled.

Mr. Carabba: Exception.

846 Mr. Geoghan: I will withdraw the question as long as counsel objects. After all, I don't represent Rudish.

The Court: The question is withdrawn.

By Mr. Solovei:

Q. You remember when Spielfogel accused Malinski of having something to do with his wife? A. No, sir.

Q. Weren't you there one night when Spielfogel said to Malinski—

Mr. McGough: I object to it.

Q. (Continued)—"I have heard that you have had intimate relations with my wife"? A. No, sir.

Q. Don't know anything about that? A. No, sir.

Q. Remember meeting him at a barber shop in New York around Avenue D, Malinski, while you were with Spielfogel? A. No, sir.

Q. Sure about that? A. Yes. 848

Q. You remember you, Malinski and Spielfogel walking towards Spielfogel's house one day where Spielfogel said he wants to prove that Spielfogel had—that Malinski had nothing to do with his wife—he wants to talk to his wife about it and have the three of you, four of you present? A. No, sir.

Q. Isn't it a fact that you and Spielfogel had guns on you and you threatened to blow his brains out because you claimed and Spielfogel claimed he had something to do with his wife? A. No, sir.

Q. You say no such incident transpired? A. 849 No, sir.

Q. Did Spielfogel ever tell you about it? A. No, sir.

Q. You generally did carry a gun on your person, didn't you? A. No, sir.

Q. Didn't Spielfogel and you say, "It is too bad we did not knock Malinski off" because he was having relations with his wife while Spielfogel was away? A. I was away at the same time Spielfogel was.

Q. No, no; I mean before that? A. No, sir.

850 *David Yellin—For People—Redirect*

Q. Did Spielfogel tell you that while you and he were up in Sing Sing, that Malinski had some relations with his wife? A. No, sir.

Q. You know there was some talk about it? A. No, sir.

Q. Nothing at all? A. No, sir.

Mr. McGough: Will your Honor properly instruct the jury with respect to these questions, that they must draw no
851 inference from questions counsel ask that are answered in the negative—that it is no proof.

The Court: Of course, gentlemen, you understand that is so. That applies to both sides. It applies to the District Attorney as well as to defense counsel. When I speak of "lawyer" I mean both sides. A lawyer may stand up here and say to a witness (by way merely of an example), "Did you shoot Christopher Columbus?" The witness says, "No." That is no evidence that he did. These
852 lawyers have a right to ask these questions. The witness says, "No; it did not happen." If it is on a collateral matter that settles it. That is the law. We are not trying cases here on atmosphere, innuendoes, and things of that kind. All right.

*Redirect examination by Mr. McGough:*

Q. When you were taken down from Sing Sing by these two detectives, did you know you

were going to be brought to New York in connection with the Fox case? A. No, sir.

Q. Counsel has said that you have been at the District Attorney's office about 50 or 60 times. Have you spoken to me on each of those 60 times? A. No, sir.

Q. You and I have discussed this case a few times, is that right? A. Yes.

Q. Can you tell this Court and jury when you and I first sat down and spoke about this case? A. Only a couple of months ago. 854

Q. Was it on May 26th, if you remember? Did I make some notes? A. Yes.

Q. Remember my looking at the calendar? A. Yes.

Q. Was it about that time? A. It was in May, yes, late in May.

Q. Now, with respect to what happened at the 62nd Squad, at Bath Beach, you were shown some pictures, is that right? A. Yes.

Q. Mr. Geoghan asked you if you made a mistake with the picture of Indovino and the picture of Beitler. Do you remember that? A. Yes. 855

Q. At that time, were you being questioned by Mr. Heffernan? A. Yes.

Q. Were you asked this question—

Mr. Solovei: I object to it.
The Court: Overruled.

Q. "Q. Now, will you take it again and see if that is the man shown on the photograph?" Were you asked that question? A. Yes.

Q. Did you make this response—

Mr. Solovei: I object to that. May the record show that the District Attorney is reading from a paper marked for identification, a statement alleged to have been made by this witness on October 27th, 1942.

The Court: Proceed.

Mr. Solovei: Exception.

856 Q. Did you make this answer? "A. Oh, that
857 is Ebbie Beitler. I did not take a good look at it. He has got the same curly hair." A. Yes.

Q. Will you take a look now at Indovino and tell me whether there is any doubt in your mind whether he is the man that stopped you, on your way home from the York Equipment Co. on that night, several nights before the 15th of February, 1941? A. There is no doubt whatever.

Mr. Carabba: I object to the form of the question.

858 Q. Is there any doubt in your mind that he is the man you had the conversation with about something good down in Coney Island? A. No doubt at all.

By Mr. Solovei:

Q. You said to the District Attorney that you were in his office for the first time you spoke to Mr. McGough on May 26th, 1943?

Mr. McGough: I object to that. That is not what he said, I respectfully submit.

Mr. Solovei: I will ask this witness this question.

Q. When was the first time you spoke to Mr. McGough? A. About three or four months ago.

Q. Was it before May 26th, 1943? A. Yes.

Q. Would you say the first time was in April, 1943? A. The first time I spoke to Mr. McGough I don't know just exactly when I first spoke to him, but the first time I discussed the case with 860 him was on May 26th.

Q. On May 26th? A. Yes.

Q. You were in the District Attorney's office on May 28th, weren't you? A. I don't know, that time. As you say, I made 60 visits to the District Attorney's office, I don't remember all the dates.

Q. You don't know whether you were there on May 28th, 1943? A. I was there several times —once or twice a week.

Q. As a matter of fact, on May 28th, 1943, you were there from 10:35 a. m. to 9 p. m., 861 weren't you? A. Yes; it may have been.

Q. And you spoke to Mr. McGough then, didn't you? A. Yes.

Q. On June 1, 1943, you were there from 11:55 a. m. to 8:15 p. m., is that correct? A. Yes.

Q. You spoke to Mr. McGough then, didn't you? A. No, I often waited for him in the detectives room—he was busy and could not see me —I would wait there sometimes all day—we would go for sometime without seeing Mr. McGough.

862 Q. In any event, you did talk on that day? A. I talked to him.

Q. About this case? A. No, sir.

Q. About some other case? A. He told me he is busy, he will see me right away—words to that effect.

Q. Whenever you went to the District Attorney's office, you never went there for the purpose of talking to him about any other case than this Fox case now that you are talking now; is that
863 correct? A. That is right.

Q. On June 15th, 1943, you left the prison at 10:55 a. m., and did not return? A. When was that?

Q. On June 15th, you left the jail where you were and you did not return. Where were you kept?

The Court: June 15th? That is yesterday.

A. Yesterday?

864 Q. Yes. A. I returned.

Q. You returned to the City prison? A. Yes.

Q. Up at 161st Street? A. Certainly.

Mr. Solovei: I now offer in evidence this record, which was subpoenaed on subpoena duces tecum, which was handed over to me by the direction of the Court, produced by the Department of Corrections of the City of New York, showing this witness—

Mr. McGough: I object to what it shows.

865

The Court: I know what it shows. You don't have to say what it shows. What materiality has that got? Does that contradict anything he said?

Mr. Solovei: Well, I did not ask him every question and every detail.

The Court: Just answer that yes or no: Does that contradict anything he said.

Mr. Solovei: For the purpose—

The Court: Just answer my question.

866

Mr. Solovei: I am not offering it for contradiction.

The Court: Did I ask you to answer my question?

Mr. Solovei: I am not offering it for contradiction.

The Court: Do you contend that that statement contradicts anything that the witness testified to?

Mr. Solovei: I am not offering it for that purpose.

The Court: Objection sustained.

867

Mr. Solovei: Exception. I ask that it be marked for identification.

The Court: Mark it.

(Marked Defendants' Exhibit A for identification.)

The Court: Now, gentlemen, we will take a recess for luncheon. Please do not discuss the case among yourselves or with any other person, or permit any one to speak to you about this case, or discuss it in your presence. You must keep your

868 minds open. Please don't form or express any opinion or conclusion as to the guilt or innocence of the defendants on trial or either of them, or any of them, until the case is finally submitted to you by the Court, after a charge on the law. You may retire and return at 2:15 p. m.

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After Recess. Trial Resumed.

869 Mr. Solovei: At this time I move to strike out the testimony of the witness Yellin, all his testimony that he is alleged to have testified to here, subsequent to the 15th day of February 1941, on behalf of the defendant of course Malinski.

The Court: Now let me see; all he has testified to here is that he saw Malinski on some street corner.

Mr. Solovei: That is right.

The Court: In company of some man
870 by the name of Spielfogel.

Mr. McGough: No, he saw him on Saturday, the 15th, with a package, which he described, about 8 o'clock, I believe, in the candy store at 8th Street.

Mr. Solovei: My application, your Honor, is addressed only subsequent to the 15th of February, at this time.

The Court: He said he saw him on Saturday with some package.

Mr. Solovei: That is the 15th.

The Court: That is the 16th.

Mr. Solovei: Sunday was the 16th.

The Court: He said he saw him on the 16th with a package under his arm?

Mr. McGough: Saturday, the 15th, Judge.

The Court: What time?

Mr. McGough: At about 8 p. m.

The Court: At 8 p.m.?

Mr. McGough: Yes. Now if there is anything in the record—

The Court: That may stand. The alleged crime is said to have occurred at around midnight.

872

Mr. McGough: At about the hour of 11 p. m.

The Court: That may stand.

Mr. Solovei: My application—

The Court: There has been no testimony as to what the facts were.

Mr. Solovei: That is the 15th you are talking about?

The Court: It might have been his wash; it might have been his laundry.

Mr. Solovei: That is the 15th?

The Court: Yes.

873

Mr. Solovei: I am talking about the 16th, on Sunday.

The Court: The testimony with reference to the 16th is that he saw him on some street corner in company with a man by the name of Spielfogel.

Mr. McGough: Yes, that was brought out on cross-examination.

The Court: On cross-examination?

Mr. McGough: I might be in error on that.

874 *Colloquy*

The Court: I think it was brought out on direct examination.

The Court: The testimony is of no consequence.

Mr. McGough: No.

The Court: And it has no bearing on the guilt or innocence, has it?

Mr. McGough: No, I think the witness answered that way when he misunderstood the question, but he did later on say that
875 it was on Saturday that he saw him with the package, at 8 o'clock.

The Court: That is prior to the time the crime was committed?

Mr. McGough: That is correct.

The Court: Of course nothing has been shown here as to what the package contained?

Mr. McGough: No.

The Court: It might have been his wash. It might have been his lunch, or anything. At this particular moment, as it stands now, it means nothing. It may
876 mean something later, but I don't know. That remains to be seen. I will let that testimony stand at the present time, Mr. Solovei. Your motion is denied.

Mr. Solovei: I accept.

Mr. Carabba: I make the same motion, if your Honor pleases, on behalf of the defendant Rudish, that any testimony he gave, the witness Yellin gave, after the commission of the crime, that occurred on February 15, 1941—

The Court: You mean as to his conversation with Rudish.

Mr. Carabba: Yes.

The Court: Your motion is denied.

Mr. Carabba: And I respectfully except.

The Court: The testimony will stand. Its credibility is for the jury. The testimony given by this witness Yellin as to the conversation he had with Rudish along about midnight or thereafter, on Saturday night, or early Sunday morning, that testimony will stand. 878

Mr. Carabba: Exception.

Mr. Geoghan: I have no motions because there were no conversations testified to as to Indovino.

The Court: You have your exception, Mr. Carabba.

Mr. Carabba: I want to keep the record clear.

The Court: Proceed.

879

LOUIS SONNENBLICK, residing at 722 Van Sicklen Avenue, Brooklyn, N. Y., called as a witness in behalf of the People, being duly sworn by the Clerk, Mr. Jehle, testified as follows:

*Direct examination by Mr. McGough:*

Q. How long have you been living there, Mr. Sonnenblick? A. This address?

Q. Yes. A. A couple of weeks.

Q. Now before that, where did you live, please? A. Before that I lived at 752 Elton Street.

Q. 752 Elton Street, Brooklyn? A. Yes, sir.

Q. And how far is that from Pine Street and Fulton Street in this Borough? A. About a mile.

Q. Do you know a man named Nathan Spielfogel? A. Yes, sir.

Q. Are you related to him? A. I am an uncle of his.

Q. You are an uncle of his? A. Yes, sir.

Q. Now were you living at 752 Elton Street on February 15, 1941? A. Yes.

Q. Were you in business for yourself at that time? A. Yes.

Q. And what was the name of your firm? A. The Biltmore Metal Weather Strip Company.

Q. And were you the proprietor of that company? A. Yes.

Q. Did you ever see the defendant Jake Rudish, or Sidney Rudish, in your life? A. No, sir.

Mr. McGough: That is all.

Mr. Carabba: No questions.

Mr. Geoghan: No questions.

*Nathan Spielfogel—For People—Direct* 883

NATHAN SPIELFOGEL, residing now at Sing Sing State Prison, New York, called as a witness for the People, being duly sworn by the Clerk, Mr. Jehle, testified as follows:

*Direct examination by Mr. McGough:*

Q. Now Mr. Spielfogel, how old are you, please? A. I am 28 years old.

Q. And you told the Clerk that your address is Sing Sing Prison? A. That is right.

884

Q. When did you go to Sing Sing Prison? A. I think it was December 15, 1941.

Q. And was that in this County or from another County in this State? A. New York County.

Q. Was that on a charge of robbery in the first degree? A. Yes, sir.

Q. Was that a robbery conviction while armed or unarmed, if you know? A. I think it was armed; I am not sure.

Q. What was the sentence of the Court following your conviction in that case? Robbery in the first degree.

885

Q. What was the sentence of the Court on that case? A. 30 to 60.

Q. And you are serving that sentence of 30 to 60 years in Sing Sing Prison? A. Yes, sir.

Q. Is that as a second offender? A. Yes, sir.

Q. In 1937, in this County, were you convicted of the crime of attempted robbery in the first degree? A. Yes, sir.

Q. And did you serve a sentence in Elmira Reformatory? A. Yes, sir.

Q. How long a sentence did you serve in Elmira? A. I served about three years.

886 *Nathan Spielfogel—For People—Direct*

Q. Do you know the defendants on trial, the three men, Malinski, Rudish and Indovino? A. I do.

Q. How long have you known Morris Malinski? A. Oh, since about June 1940,—no, 1937.

Q. Roughly about six years, would you say? A. That is right.

Q. What nickname did you have for him? A. I call him "Moish".

Q. And how long do you know Sidney Rudish?
887 A. I must know him about 15 years.

Q. Under what name do you know him? A. Jake.

Q. And the third man, Indovino, how long do you know him? A. Since about May, 1937.

Q. About six years and one month? A. Something like that.

Q. Did he have any nickname? A. Yes, they called him Joe the Tiger.

Q. And now do you know of your own knowledge the night that Patrolman Leon Fox was shot in Coney Island? A. I do.

Q. What date was it, please? A. I think it was
888 February 15, 1941.

Q. Now do you recall Davie Yellin coming to you a few days prior to that particular day? A. I do.

Q. And do you recall having a talk with him? A. I did.

Q. Tell us, please, where that conversation took place. A. That conversation took place on 7th and D, in the candy store.

Q. Was Tiger's name mentioned in that conversation?

Mr. Geoghan: I object.
Mr. Morritt: I object.
The Court: Objection sustained.

Q. Tell us, please, whether anyone here in this court was mentioned during that conversation.

Mr. Geoghan: That is objected to.
The Court: Just "Yes" or "No".
The Witness: Yes. 890

Q. Now will you tell us, please, what Davie Yellin told you and what, if anything, you said to him?

Mr. Solovei: I object to it.
Mr. Geoghan: I object to it on behalf of the defendant Indovino, not in the presence of Indovino.
The Court: As far as the defendant Indovino is concerned, the objection is overruled. 891
Mr. Geoghan: Exception.
Mr. Solovei: I object to it on behalf of the defendant Malinski.
Mr. Carabba: I make the same objection.
The Court: Just a moment; sustained as to Malinski.
Mr. Carabba: I make the same objection on behalf of the defendant Rudish.
The Court: Sustained as to Rudish.

892 *Nathan Spielfogel—For People—Direct*

By Mr. McGough:

Q. May we have the conversation, please. A. What do you mean, what Yellin told me?

Q. Yes, what Yellin told you at that time and place. A. He called me on the side in the candy store and he says to me, "I was coming home from work tonight and I met Louie and Joe the Tiger," so I says, "What about it"? He said, "They want to talk to you about a piece
893 of work out in Coney Island", so I says, "Davie was telling me that the Tiger was laying it all out for him. He was outlining the robbery. It was supposed to be a Loew's out in Coney Island and he is supposed to be the tipster."

By the Court:

Q. Who is "he"? A. Indovino, the Tiger.

Mr. Geoghan: I object to that and move to strike it out.

894 Q. Is that what Yellin said to you? A. Yes.

The Court: Proceed.

Mr. Geoghan: May I make a further objection to the testimony at this time on the ground that this witness though he is not a co-conspirator and therefore an accomplice cannot testify to any conversation had between him and Yellin.

The Court: The objection is overruled.

Mr. Geoghan: Exception.

By Mr. McGough:

Q. Go ahead. A. He told me it was a rookie cop walking with a—with a paymaster from the Loew's. He says they walked about two blocks; it is a dead place out in the Island. It is dead out there. He says it is a soft take. He said, "Are you going out to see him," Yellin, "see him tonight. I says, "No, as long as the Tiger give it to him, it don't interest me", and that is all that was said there. 896

Q. Did you see Beitler a short time thereafter? A. Beitler? Yes.

Q. When did you see Beitler after that? A. The next day.

Q. And where did you meet him? A. At 7th and D. He called me up.

Q. He telephoned you, did you say? A. That is right.

Q. Did you have a talk with him? A. I did.

Q. After that, did you meet him? A. Yes, he says, "I will be down in a few minutes; stick around". 897

Mr. Geoghan: I object to anything Beitler said.

The Court: Objection overruled.

Mr. Geoghan: Exception.

Mr. Solovei: I object to it on behalf of the defendant Malinski.

The Court: Objection sustained.

Mr. Carabba: I make the same motion on behalf of the defendant Rudish.

The Court: Objection sustained.

898 *Nathan Spielfogel—For People—Direct*

By Mr. McGough:

Q. Did you see Beitler shortly after he telephoned you? A. I did.

Q. Did you have a talk with him? A. I did.

Q. Tell us, first, the location where you met him and had the talk. A. At 7th and Avenue D.

Q. 7th Street? A. Yes, sir, and Avenue D.

Q. Now tell us what he said to you and what, if anything, you said to him. A. The first thing
899 he says, "Did you see Dave".

Mr. Solovei: I presume your Honor makes the same ruling?

The Court: I have ruled already. The record is protected.

Mr. Solovei: This is a separate conversation.

The Court: The testimony is only received with regard to Indovino.

Mr. Geoghan: I presume my objection covers anything that he is going to say?

900 The Court: Yes, Mr. Geoghan.

By Mr. McGough:

Q. Give us the conversation between Beitler and yourself at that time. A. He says to me, "Did Davie give you the low-down what I told him last night?" I says, "He did". Then he started in, "Why didn't you come down to see me last night?" I said, "I was busy", see, because he used to hang out on Houston Street, so I didn't—I just didn't feel like it. I knew Tiger give it to him and I didn't have any heart in the

thing. I didn't want to go over there. Then he started to tell me all about this Coney Island thing. He said it is a soft take; it is like taking candy from a baby. He said, "What is the matter; the Tiger didn't give it to you. He gives it to me. You got nothing to worry about". I says, "I don't want no part of it", so then he says to me, "How is chances of using the pieces", so I told him—

Q. Wait a minute; before you come to that. During that conversation was anything said as 902
to why you did not want to go in addition to what you have already said? A. Yes, I told him I didn't like the tipster.

Q. Anything else? A. When I put a gun in my hand, I told him, "I ain't going to worry about the after effects". I says, "I don't want no part of it."

Q. Did either you or Beitler say anything further at that time? A. Yes.

Q. Tell us the rest of the conversation. A. He says, "Is it all right to use the pieces?" I says, "You will have to ask Moish about them. Those 903
ain't mine. Those are his."

Mr. Solovei: I object to all this testimony.

The Court: That is received only as against Indovino. The answer is stricken out as far as the defendant Malinski is concerned and as far as the defendant Rudish is concerned.

The Witness: I said he will have to see Malinski if he wants the pieces. I ain't

904 *Nathan Spielfogel—For People—Direct*

got the pieces. He said, "Where is Moish now?" I said, "The only place where I figure he would be is the store where he works."

Q. Where is that? A. 10th Street and First Avenue. So before he left, I told him, I said, "Listen Ebbie, don't have no hard feelings; maybe some other time, but this is one time count me out." So before he left me I says to him,
905 "Come on up", and we walked over to 8th Street and Avenue D. I called Davie out of the candy store.

By the Court:

Q. Davie who? A. Yellin. I said, "Let us have a drink together before you go", and we had a drink apiece and he left for Malinski's store.

By Mr. McGough:

906 Q. You had a drink with Beitler? A. Beitler and Yellin.

Q. Now on the night of February 15, 1941, did you see Moish Molinski? A. I did.

Q. What time did you see him? A. I seen him about 1:30 in the morning.

Q. Where did you see him? A. He come up my house.

Q. That would be the early morning hours of the 16th? A. That is right.

Q. Sunday morning? A. That is right.

Q. And where were you living? A. I was living at 92 Lewis Street, Manhattan.

Q. Was Malinski alone when he came to your house at that time? A. Yes.

Q. Were you awake when he came to the house? A. Yes, I was lying in bed but I was not asleep.

Q. Did you get up and speak to him? A. I did.

Q. Tell us, please, what Malinski said to you on that occasion. A. As soon as he stepped in 908 the house—

Mr. Morritt: I object to that on behalf of Rudish.

Mr. Geoghan: Same objection on behalf of Indovino.

The Court: What is the date of this?

Mr. McGough: This is the early morning of Sunday, the 16th of February, 1941.

The Court: Objection sustained. This is received only with reference to Malinski.

909

Mr. McGough: That is correct.

The Court: It is only offered for that purpose. Proceed.

The Witness: As soon as he stepped in the house, he told me, "We had a shooting match." He said, "I want to talk to you." I said, "Wait a minute, take it easy, Moish." My wife was there. I stepped into the hall with him. He said, "We had a shooting match. Get dressed. I got to talk to you"; so I went back in the

910 *Nathan Spielfogel—For People—Direct*

house and got dressed and left with him and went down to the Citadel Club.

By the Court:

Q. Where? A. The Citadel Club.

By Mr. McGough:

Q. Where is the Citadel Club? A. On 4th Street and Avenue C.

911 Q. Did you notice how Malinski was dressed at that time? A. Yes, he had a suit on; a brown suit, I believe.

Q. Anything else? A. No.

Q. Did he have a hat? A. No.

Q. A coat? A. No.

Q. Did you have any talk with him about the hat at that time?

Mr. Solovei: I object to the District Attorney leading the witness.

The Court: Yes, objection sustained.

912 Q. Tell us, please, how he was dressed? A. He just had a suit on. His hair was all thrown apart like—he looked like a wild man from the wind blowing, and he did not have no coat.

Q. Did you have any talk about that? A. Yes, after I come downstairs.

Q. Where did that take place? A. Downstairs. I said, "What happened to your hat and coat?" He said, "I got a coat over in the club but the hat, it is Hershee's hat. I dropped it on the hoist after I jumped out of the car."

Q. Did you say it was Hershee's hat? A. Harry Levine's.

Q. Did Harry Levine have a nickname? A. We used to call him Hershee.

Q. That is the nickname of Hersh? A. That is right.

By the Court:

Q. What is a hoist? A. A hoist is a stick-up.

914

The Court: Go ahead.

By Mr. McGough:

Q. Did he say anything else when he said that he dropped Hershee's hat? A. He said—see, he did not say that then. I went back up the house again to get my hat. I gave him the green one.

Q. You gave who a hat that night? A. Malinski.

Q. That was a green hat? A. Yes, that is right. Then we started back over for the club when I come down.

915

Q. And that was the Citadel Club? A. That is right.

Q. Did you talk to Malinski on the way over to the Club? Yes. He says, "The cop went down—the donkey went down like a ton of bricks."

Q. Who said that? A. Malinski.

Q. Anything else? A. "It is a sure thing he will never make it. Valentine will pay off one of them brand new 'C' notes"—

Q. Who said that? A. —"by morning"—Malinski.

Q. What is a "C" note? A. A hundred-dollar bill.

Q. What did you say? A. I didn't say anything. I was just listening. I was a good listener.

Q. Did you arrive at the club? A. I did.

Q. And how long were you at the club with Malinski? A. Oh, I would say about three-quar-
917 ters of an hour; half an hour.

Q. Tell this Court and jury what was said at that time between the two of you. A. He started off—he says, "Here is what happened." He says, "I met Jake about 9 o'clock."

Mr. Morritt: I object to this.

The Court: Objection sustained. This testimony is received only as against Malinski, and the jury is instructed to disregard it as against any of the other defendants.

918

Q. Go ahead. A. He said, "I met Jake about 9 o'clock on 8th Street. From there we shot over to Ebbie's on Houston Street. That is where Beitler used to hang out," he says, "and from there we shot out right to the Island. On the way out, it was all made up for who is going—that is, to take the cop and who is going to take the pay-man. And when they got out there, they went to the Cosmo Restaurant right near Loew's, and they had a little snack, and then Ebbie stepped out of the place, out of the restaurant, and went by Loew's. He come back in a few

minutes and he told Jake, pull the car out near the bank. He said it is getting time and when I give you the signal, he will be on the corner, for Moish to get ready. That means the cop is coming down with the pay-man, and a short while later, the patrolman and the pay-man come down. They passed Ebbie Beitler and he give Moish the signal, and Moish stepped out of the car. He says as soon as he hollered 'this is a hoist' to the cop, so he says like the cop went for his 'piece'. It is 100 per cent. sure the cop 920 went for his piece, so I threw a few. I pegged a few."

Q. Who said that? A. Moish.

Q. He said he threw a few? A. That is right.

Q. Go ahead. A. And he is supposed to go for the money but he never did, and he just jumped right in the car, and Ebbie run for the money and he hollered to the pay-man, "Stay where you are or I will drop you", and he jumped in the car, and the door was broke, on one of the doors—

Q. Who told you the door was broke? A. Ma- 921 linski. He says so he wanted to go to the door, that he gets in fast enough, so he jumped in the front over the seat into the back and then Ebbie come jumping in, jumped in, and then they left, and he says, "That cop, that donkey had a lot of balls, he laid on his belly and was still pegging. He was still throwing pills, still pegging." He says, "We went about a couple of blocks", he said, "two and a half blocks and made a one turn and jumped out." He said, "Ebbie and I grabbed a cab and we shot back to New York." He said, "First we took one cab

and we went about twelve blocks." He said, "Then we jumped out and took another cab and come all the way down to the East Side."

Q. This conversation took place early Sunday morning at the Citadel Club? A. That is right.

Q. Will you continue the conversation, please? Was there anything said about what happened after they got to New York? A. Yes. He said they stopped right near the church on 4th Street and Ebbie instructed him to go up in the club
923 with the money and that he would go over to his aunt's store a few blocks away on Houston Street and drop the "pieces", and that he would be back soon and that would give Jake enough time to come back because he was supposed to come back by train.

Q. Anything else? A. Then Jake come back; Ebbie come back and they split up in the club.

Mr. Solovei: Do I understand this to be a continuous conversation between him and Malinski?

924 By the Court:

Q. Was this in your presence or what somebody told you? A. He told me.

Q. Malinski told you? A. Yes.

The Court: That testimony is stricken out as far as the defendant Rudish is concerned, it will stand as far as Malinski is concerned and it is received only as to him.

925

Mr. Geoghan: It is stricken out as far as Indovino is concerned, too?

The Court: Exactly.

By Mr. McGough:

Q. What you are telling us now is what Malinski told you on that morning? A. Yes.

Q. Was there anything more said? You mentioned something about a cut, did you? A. I did. They split it up in the club and Jake and Beitler was given that bum rats for not doing as he was told to do.

926

Q. Will you tell us what Malinski said about that? A. He said, "I done everything I was supposed to do." He said, "We made it up before that we take the cop and I took the cop. Ebbie was supposed to go for the money and he went for the money," and both of them, Rudish and Ebbie is saying that Malinski is supposed to go for the money.

Mr. Carabba: I object.

927

The Court: I have sustained your objection right along, and I have instructed the jury in no uncertain terms that the testimony here applies to Malinski, and not to either of the other defendants. Do you want additional instructions to make it more emphatic than that?

Mr. Carabba: No, your Honor. As long as your Honor has instructed the jury about that, that is sufficient.

The Court: I have underscored the words. I have emphasized them. I do

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so again, that this testimony is received only as against Malinski.

Q. Was there any more conversation, please? A. Yes.

Q. What was said after that, if anything? A. (No answer.)

Q. You told us that Malinski told you that Ebbie and Rudish were talking about who was doing what. A. Yes. He said Rudish was driv-
929 ing the car, and him and Ebbie, one of them was in the back, and Malinski was in the back, and Ebbie was sitting alongside of him.

Q. During any part of that conversation, was the subject of weapons discussed, and if so, please tell us what it was. A. Up in the club, I asked him, Malinski, "Which 'pieces' did you use?" In other words, what guns did you use on that hoist, and he said, "I used the 'pieces' that Red the tippler got out of the locker up town."

Q. "Red the Tippler" got out of the locker
930 up town? A. Out of the checking place where you check baggage.

Q. Do you know "Red the Tippler"? A. I do.

Q. What is his right name? A. I believe it is Eisler.

Q. Eisler? A. That is right.

Q. Was anything said as to the make of the guns? A. Yes.

Mr. Carabba: Of course that is leading.

Mr. McGough: I dislike to lead.

The Court: I know it is leading, but go ahead.

The Witness: He says, "We used two .38's side-throwers and two .45 automatics." He said he had the .38's and Ebbie had the .45's.

Q. At what time? A. On the hold-up.

Q. Do you recall any additional conversation with respect to those guns and Red the Tippler or after Red the Tippler— A. I spoke to Red. He told me himself—

932

The Court: No, no, strike that out.

Q. Don't tell us what anybody said. I am asking you about your conversation with Malinski. Was anything said in addition to what you told us about the guns with respect to Saturday the 15th of February? A. Oh, that he went— and put the "pieces" that were hot, to put them over in his aunt's store.

Q. Who did? A. Ebbie.

Q. Before that, was anything said with respect to those guns, where they were on the early afternoon of Saturday, the 15th, Saturday afternoon? A. Saturday afternoon?

933

Q. Or Saturday evening. A. Saturday afternoon, they were in the store.

Q. What was in the store? A. The pistols.

Q. Who told you that? A. I knew it myself because I put them in there.

Q. Who told you that? A. Malinski.

By the Court:

Q. Malinski told you that he put the guns in the store? A. I knew they were there.

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Q. What? A. Yes, I was there when he had it.

Q. You were there when he had the guns in the store? A. Yes.

Q. On Saturday the 15th? A. That is right.

Q. You mean, when Malinski had the guns? A. That is right.

Q. Malinski? A. Malinski.

Q. Is it Malinski or Dolinsky? A. Malinski.

Q. You mean the defendant Malinski? A. That is right.

935

The Court: Proceed.

By Mr. McGough:

Q. What time did Malinski go home that night, if you know? A. That night?

Q. That night of the conversation.

Mr. Solovei: The 15th, we are talking about.

The Witness: I guess it was about four in the morning.

936

Q. Where did you leave him? A. On Essex and Delancey Street, going down to the trolley car.

Q. Now did you see this defendant Rudish on Friday, the 15th of February, 1941? A. Friday?

Q. On Friday the 15th? I mean, Friday the 14th; excuse me. A. I did.

Q. That would be the 14th, would it not? A. Yes.

Q. Where did you see Rudish at that time? A. I seen him by the candy store on the 7th and D.

Q. Did you have a talk with him, Spielfogel? A. Yes, he says to me, "How come you are working? What is the matter with that thing? How come you ain't going on it," so I says to him, "I don't like it, Jake; that is all," That was all that was said.

Q. When was the next time that Friday that you saw Rudish? A. The next time I seen him was Saturday, Saturday afternoon.

Q. Can you tell us about what time and what place? A. I guess it was about 3 o'clock Saturday afternoon. 938

Q. Where? A. 7th and D.

Q. Were you alone? A. I was.

Q. Did you have a talk with him then? A. I did.

Q. Tell us, please, what he said to you and what you said to him. A. He says to me, "Hey Slip"—

Q. Is that your nickname, Slip? A. That is right. "How come you ain't going on that thing? It is supposed to be a good thing". I says, "I tell you the truth, Jake, I don't like the tipster." 939
That is all I said to him.

Q. Was anything said about any other person at that time, between Rudish and you, on Saturday afternoon? A. Yes, he says that Malinski, Ebbie and Beitler is going to step out on it tonight. He has got to meet them at 9 o'clock that night. He says to me, "I am going out to meet out in Brooklyn by your uncle's place and I want to get somebody a job and all I want is your okeh when I go there."

Q. What was your uncle's name? A. Louis Sonnenblick.

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Q. Where was he living then? A. 752 Elton Street, Brooklyn, he was living.

Q. And Rudish said he was going out to see him on that day? A. He said he was going out to see my uncle.

Q. Did he say why?

Mr. Solovei: That is all over my objection on behalf of the defendant Malinski.

The Court: Objection sustained.

941 Mr. Geoghan: Of course that also goes as to the defendant Indovino?

The Court: Objection sustained.

Mr. McGough: This is offered solely against Rudish, if your Honor pleases.

The Court: Yes, and the jury must so understand.

Q. You were telling us, Spielfogel—

The Court: I instruct the jury again that the evidence is only received as against Rudish in this instance.

942

Q. Now, Spielfogel, you said that Rudish and you were discussing your uncle Louis Sonnenblick of Elton Street? A. That is right.

Q. Did you give us all the conversation respecting your uncle? A. I told him and says, "All you go to do is tell my uncle, give him the guy's name, and when the parole officer comes out there, to say that he is getting $15 a week and that his people got him the job."

Q. That was Saturday? A. That was Saturday.

Q. When did you see Rudish the next time after that? A. The next time I seen him was Sunday.

Q. Would that be after Patrolman Fox was shot? A. That is right.

Q. Where did you see Rudish then? A. 7th and D, at the candy store; 7th and D.

Q. What time was it on Sunday? A. It must have been about maybe one in the afternoon; one o'clock in the afternoon.

Q. What was the first thing he said to you then? 944

Mr. Carabba: I object to that, after the shooting.

The Court: What Rudish said to him after the shooting?

Mr. Carabba: Yes.

The Court: Objection overruled.

Mr. Carabba: Exception.

The Court: The evidence is received only as against Rudish.

The Witness: I walked in the candy store and asked for an egg cream and he come bouncing over to me and he said, "Where were you last night?" I said, "Go ahead, Jake, have a drink", and we both had a drink. He said, "Come on, I want to talk to you." I said, "I want to talk to you, too." We went over to a place where they have all kinds of delicatessen food around on 7th and Lewis, and he starts saying, he says, "With Moish, one of these days, you are going to wind up in the sewer with him; what a dog cocksucker 945

he is". He said, "Last night everything was fixed to do it one way and he balled everything up. All he knows how to do is throw a couple of shots", and he says to me—I told him, "Listen, Jake, forget what happened. Nobody is going to know about it. You cannot get into trouble if you don't say nothing about it." He said, "You tell that big-mouthed son-of-a-Bitch to worry about himself". I said, "Nothing
947 is going to happen; everything will be all right."

Q. Before you had that talk with him, did he say anything about Sonnenblick on Sunday? A. He did. He says, "When he switched over from his clothes into like what he works in, like he works on mechanic work, he left the address that I gave him in the suit," he says, "and I called up a couple of times trying to get you but I could not get you," he said, "Where were you?" I said, "Maybe I was by the Melrose, I know I
948 was around".

Q. What is the Melrose? A. The Melrose is a restaurant on Avenue C and 7th Street. So he says, "I called you a couple of times. I tried to get in touch with you." I said, "What was it all about?" He said, "I left the address in the other suit and I tried to get you to get the address over again. I was all the way out in the asshole of Brooklyn; I was on the right track and I went lost. I could not remember the address." I said, "Why didn't you call your wife up and get the address out of your pants?", and he was giving me a lot of—

Q. Tell us what he said. A. He said, "It ain't important now. I will do it during the week".

Q. Did he say what time he was out in Brooklyn? A. Yes, it was getting kind of close to the nine mark, he said, and he knew he had to go back, so the first load he seen—

Q. The first what? A. The first load. That means a car.

By the Court:

Q. That is the underworld word for "car"? 950
A. Yes, sir.

Q. All right. A. He said, "The first load he seen that looked anyway decent he just stepped in it and he shot all the way back from Brooklyn to New York, and that he picked up Malinski on 8th Street, and then he rode over to Houston Street and picked Ebbie up.

Q. Rudish told you this? A. That is right.

Q. Go ahead. A. Then they shot out to the Island.

Q. Did he say anything else from that point on? This is on Rudish. Did Rudish tell you anything 951
on Sunday in addition to what you have told us?
A. That is all I remember.

Q. This term that you say was used with respect to Malinski, you say that Rudish called him that word? A. What is that?

Q. The word that you gave us before in your testimony, what they called Malinski, you said Rudish told you that? A. That is right.

Q. About being a dog—something? A. Yes, that is right.

Q. With respect to that, was anything further said by Rudish on that subject or something fol-

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lowing that? A. Yes, he also told me, he said, "I would rather starve to death before I ever step with that bum again". In other words—

Mr. Carabba: I object to the "in other words".

The Court: Objection sustained.

Q. Don't tell us "in other words". Just tell us what he said. Was there anything else said
953 about Coney Island by Rudish?

Mr. Carabba: Of course that is leading. He already testified he does not remember any more.

The Court: Go ahead.

Q. About Coney Island: anything said by Rudish in addition to what you have told us about Coney Island? A. Yes, he says, "That we had it all made up".

Q. Anything extra? Anything in addition to what you told us about that? A. (No answer.)

954 Q. Have you given us all the conversation you had with Rudish on Sunday, the 16th of February? A. (No answer.)

Q. Anything else? A. That is all I can remember.

Q. Did Rudish tell you anything about what happened after the policeman was shot? A. He did.

Mr. Carabba: I object to that is leading. I have sat here and the District Attorney has—

The Court: Now wait a moment. The District Attorney has exhausted the witness' recollection, and he may call his attention to one or two items without unduly leading him. Your objection is overruled.

Mr. Carabba: Exception.

The Court: It is perfectly proper in the trial of a case. Proceed, Mr. District Attorney.

Q. Tell us about that, please. A. He told me, 956
he says, after he got away from the hoist, after he dropped the car, he went up on the—he got up on the Stillwell Avenue station.

Q. Who did? A. Rudish. He says it sounded like all the sirens in New York was in Coney Island that night. Between that and the fireworks, the shooting he meant, he said he was going insane waiting for the train to come along.

Q. Did he tell you where he went after he got on the platform? A. He did.

Mr. Carabba: I object to that as leading. 957

The Court: Objection overruled.

Mr. Carabba: Exception.

The Witness: He said after he got the train, he shot all the way back to New York, to the Citadel Club.

Q. Go ahead; anything else? A. Well, he told me he brought a pair of plates back with him, a pair of license plates.

Q. Anything else in addition to that conver-

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sation about going back to the club? A. (No answer.)

Q. Did he say what time he went home that night? A. What time he went home?

Q. Yes. A. Yes; he said he left about two o'clock.

Q. Anything else said, if you recall? A. Well, I don't recall.

Q. Was there any mention made of money by Rudish on Sunday?

959

Mr. Carabba: Your Honor pleases, I object.

The Court: Objection overruled.

Mr. Carabba: May I take an exception on the record?

The Court: Yes, everything you say is going on the record without you asking the Court for the exception. Every word that is uttered here in the courtroom goes on the record. Proceed, please.

The Witness: He said that there was

960 not much money there. They got about 220 apiece.

By Mr. McGough:

Q. $220? A. Yes, sir, but Malinski, he got an extra $20 on account of that two of his pieces was used, so Ebbie said to him, "Take an extra double sawbuck for the pieces."

Q. Do you recall sometime in October 1942 being present while Morris Malinski was being interrogated by the District Attorney? A. I don't know what you mean by that.

Q. Being questioned? A. Questioned, yes.

Q. That was about the time of his arrest, is that right? A. That is right.

Q. By the way, did you write to anybody and ask to be brought down from Sing Sing to testify?

Mr. Solovei: I object to that.

The Court: Objection sustained.

The Witness: I did not.

The Court: Wait a moment; the objection is sustained. Strike out the answer. 962

Q. Will you tell us, please, whether or not at the time that Malinski was being questioned you had occasion to talk to him? A. I did.

Q. And is that in reference to this particular case? A. Yes.

Q. Will you tell us, please, what Malinski said to you at that time and what, if anything, you said to him?

Mr. Solovei: May we have the time, please? 963

The Court: Yes.

Q. Can you fix the date, Spielfogel, about when? A. It was in October, about two weeks after I came down. I don't remember the exact date.

Q. What year, please? A. 1942.

Q. Can you tell us where that took place? A. In the Hotel Bossert.

Q. Tell us what Malinski said and what you said.

Mr. Morritt: I object to that as to Rudish.

The Court: Objection sustained.

The Witness: I did not say anything. He asked one of the Lieutenants if he can speak to me, so I would not speak to him, so he started in like almost going to bawl. They all said, "Go over and see what he wants"; so they let me go into the next room with him and he said to me, "Listen,
965 Slip".

Q. Who said to you? A. Moish.

Q. Tell us what he said. A. He said, "I know they got Jake in the other room otherwise they cannot know so much." He said, "They know too much already". He said, "I might as well go out there and tell them the rest and get it over with", so I said to him, "Well, you are over 21. You know what the score is; do what you want." So he asked the Lieutenant, he said to him, "I will tell the truth but I don't want
966 to go to the chair for this," so the Lieutenant says to him, "I cannot promise you anything." He says, "This is a police case. You will have to take your chance. Whatever happens, happens," so Malinski said, "I would like to bring a rabbi in or a fellow by the name of Nat Math."

By the Court:

Q. Nat who? A. Math, I believe.

Q. Math? A. Yes. He said, "I would like to talk to him before I say anything," so the

Lieutenant says, "This is my case. You have got to take your chances," and then he started to tell everything.

By Mr. McGough:

Q. Who started telling everything? A. Malinski told the Lieutenant.

Mr. McGough: All right; you may inquire.

The Court: This is going to be a protracted cross-examination, I take it? It may take some time? 968

Mr. Carabba: Yes.

The Court: Suppose we take a few minutes' recess at this time and then we will continue on until about 6 o'clock. Gentlemen of the jury, do not discuss the case while you are out and keep your minds open until the case is finally submitted to you.

(Recess.)

969

NATHAN SPIELFOGEL, resumed.

Mr. McGough: May I ask just one or two questions?

The Court: Yes.

By Mr. McGough:

Q. I show you People's Exhibit B for identification and ask you if you can identify that

as the hat that you testified about here before the recess?

Mr. Morritt: Objection, may it please the Court.

The Court: Objection sustained as to form.

Q. Will you examine People's Exhibit B for identification that I now hand you, please?

971

The Court: Look at it.

The Witness: Yes.

Q. Can you tell us whether or not that is the hat that you testified Malinski wore at the time you say he received it from Hersh Levine? A. I don't know if it is this one but one just like that.

Mr. Solovei: I move to strike the latter part out.

The Court: Motion denied.

972 Mr. Solovei: Exception.

Q. One just like that, is that what you said? A. Exactly.

Mr. McGough: That is all.

Mr. Solovei: Now if your Honor pleases, on behalf of the defendant Malinski, in view of this man's testimony relative to conversations had between him and Beitler, and this not in the presence of the defendant Malinski, I move for the declaration of a mistrial.

The Court: Motion is denied.

Mr. Solovei: Exception.

Mr. Geoghan: I ask to strike out all the testimony of this witness as to Indovino, on the ground that he has merely testified to what Yellin told him, and the conversation was not in the presence of Indovino.

The Court: Mr. Geoghan, I have ruled on the objection and I have sustained it in each instance where the testimony was 974
not had with the defendant Indovino. I have sustained your objection.

Mr. Geoghan: That is all right.

The Court: Whatever somebody else said about Indovino, subsequent to the time of the commission of the alleged offense, is certainly not binding on Indovino. Is that satisfactory?

Mr. Geoghan: Yes, that is all right.

Mr. Carabba: I think your Honor ruled this morning that all witnesses on both sides be excluded from the court- 975
room?

The Court: Yes.

Mr. Carabba: I understand that Mr. Heffernan is going to be a witness here.

Mr. McGough: I understand to the contrary.

The Court: I do not know that.

Mr. Heffernan: I will be glad to withdraw, Judge.

Mr. Carabba: I heard he is going to be a witness and I thought the Court's order should be respected.

976 Mr. McGough: I did not intend to call him.

The Court: He may be a witness?

Mr. McGough: Excuse me?

The Court: He may be a witness?

Mr. McGough: He may be, but I am not planning on it.

The Court: It is cooler outside, Mr. Heffernan. You had better step out. Please retire.

977 *Cross-examination by Mr. Solovei:*

Q. Spielfogel, you are known as Slip, is that right? A. That is right.

Q. Is that right? A. Yes.

Q. And do you mind if I call you Slip for convenience? A. No, that is all right.

Q. Now Slip, you gave us a pretty minute detailed discussion of everything that happened on the night of February 15th, is that right? A. I believe so.

978 Q. You remembered everything very clearly and very distinctly as to what each one of these defendants told you at different times, is that right? A. That is right.

Q. When they told it to you, you made no memorandum of it, did you? A. I did not.

Q. And this was sometime in 1941 that they told it to you, is that right? It was sometime around 1941 that you had these conversations? A. That is right.

Q. And after that you had considerable trouble of your own, didn't you? A. A few months after.

Q. You had some—at least one stickup case, anyhow, didn't you? A. What was that?

Q. You at least had one stickup of your own where you were involved? A. That I was arrested for?

Q. What? A. Do you mean that I was arrested for?

Q. That you are now doing time, 30 to 60 years? A. That is right.

Q. Before that, did you have any other stickup cases that you were not arrested on? A. No, sir. 980

Q. Or some cases where you shot and killed somebody that you were not apprehended? A. I never killed anybody.

Q. When you went out with your revolver and you were armed, you went out to protect yourself in the event of being apprehended, you were ready to shoot? A. But I did not.

Q. But you would, if you had to, wouldn't you?

Mr. McGough: That is objected to.

The Court: Objection overruled.

981

Q. You would shoot your way out if you had to, wouldn't you, Slip? A. I would not.

Q. You would not shoot if you were cornered? A. No.

Q. When you were arrested in New York for the crime committed on May 10, 1941, Yellin was your co-defendant, is that right? A. That is right.

Q. You went up to a poolroom there and you stuck up a number of people with loaded revolvers, didn't you? A. That is right.

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Q. And you were convicted of that robbery, is that right? A. That is right.

Q. And you were also convicted for having a loaded revolver on your person, weren't you? A. No, sir.

Q. Didn't the jury find you guilty of robbery in the first degree and also of having a loaded revolver in your possession, and you got 30 to 60 years on the robbery charge, and a suspended sentence on the other charge? A. That is right,
983 but I did not have no gun on me at the time.

Q. What? A. I didn't have no gun at the time when I was arrested.

Q. You mean the gun was found under your car, wasn't it? A. In my car?

Q. Well, the gun was found under the car and the police claim they saw you throw the gun under the car when you made your getaway, is that right? A. That is what they claim.

Q. And that is what you were convicted of, is that right? A. Yes.

Q. And when you were arrested you had three
984 holes in your pants, showing that three shots were fired from your pants pocket, is that right? A. I had a couple of holes but there was not three shots fired.

Q. How many shots were fired out of your pants pocket? A. One shot as far as—that was fired at me.

Q. They were fired from your pocket, out of your pants pocket, weren't they? A. (No answer.)

Q. What is that? A. No.

Q. A minute ago you just said as far as you

know there was only one hole? A. There were three holes.

Q. There were three holes, is that right? A. A few holes.

Q. And the holes were from your pants pocket, showing that you discharged three cartridges from your pocket with a revolver, is that right? A. I did not discharge any shells from my pocket.

Q. Do you mean that they fired three shots at you? A. No, sir. I don't know myself how I got 986
the holes in my pocket.

Q. You don't know how you got those three bullet holes in your pocket? A. I don't even know if they were bullet holes.

Q. What kind of holes do you think they were?

Mr. McGough: That is objected to.

The Court: We are not going to try out that case as to what the holes were. Proceed. Can you get any more out of him than that he is a yegman and a stickup man, and a gunman and a convict, doing 30 987
to 60 years? Do you want to impeach his credibility any further than that? Go ahead and show that he can be any worse than that. If you can do that, go ahead and do it. He is a stickup man, a gunman and a convict in Sing Sing; a robber. Do you want to paint the lily any more. Go ahead.

Mr. Solovei: I think your Honor painted a fair picture.

The Court: It is res ipsa loquitur as they say in Latin. It speaks for itself. I will

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permit you to go further if you desire to go further.

Q. Where did you say you lived in February 1941? A. February 1941?

Q. Yes. A. I lived at 92 Lewis Street.

Q. 92 what? A. Lewis Street.

Q. In New York? A. That is right.

Q. I understood you to say that you were married? A. Sir.

989 Q. What? A. What was that?

Q. Were you married then? A. I was.

Q. Did you actually have a marriage ceremony performed between you and your wife? A. I should hope to smile, I did.

Q. You should hope to smile you did? And you said on your direct examination, you said something about, "When I put a gun in my hand, I do not want to worry about any after effects". Do you remember saying that? A. Yes, that is right.

Q. And I take it that you meant by that, when
990 you go out on a job with a gun, when you went to do a job so that you left no traces behind, is that it? A. That I don't have to worry later about anybody giving me up.

Q. And leave no traces behind? A. What do you mean traces?

Q. Well, I mean you want to do a good job so they cannot fasten the liability on you afterwards? A. That is right.

Q. You called Morris Malinski, Moish, is that right? A. That is right.

Q. Moish means in the Jewish language, Morris, don't it? A. Morris, yes.

Q. Now what time was it on the 15th of February for the first time that you saw Malinski? A. What do you mean, when he come back?

Q. The first time you saw him on February 15th, what time did you see him? A. The first time?

Q. Yes. A. I seen him about 10:30 that morning, Saturday morning.

Q. Saturday morning at 10:30? A. That is right. 992

Q. Where did you see him? A. Tenth Street and First Avenue, where he used to work.

Q. Where he worked? A. That is correct.

Q. Did you go over there to visit him? A. I did.

Q. And at that time there was no particular conversation that you had in reference to this case, was there? A. To this case? No, not at the time.

Q. You just paid him a friendly visit, is that it? A. Not a friendly visit.

Q. What? A. It was not a friendly visit, is that it? A. Not a friendly visit. 993

Q. What? A. It was not a friendly visit.

Q. It was not a friendly visit? A. No.

Q. Was it a business visit? A. That is right.

Q. What business did you have to visit him? A. What do you mean?

Q. What business did you have?

By the Court:

Q. What did you go there for, he means? A. We were supposed to go some place to do a job.

By Mr. Solovei:

Q. You and he? A. That is right, and somebody else.

Q. That day? A. That morning; that afternoon.

Q. And he was working? A. That is right.

Q. And he remained on his job working, is that right? A. No.

Q. Didn't he stay on the job where he worked?

The Court: Do not shake your head.

The Witness: No.

Q. You said something about seeing him about 1:30 a. m.? A. Saturday—

Q. After 10 o'clock— I withdraw that. After 10 o'clock on the 15th of February 1941, did you see him later on about 1:30 a. m.? A. 1:30 in the morning, yes. In other words, that will be Sunday morning.

Q. Yes, and that is the time you say you saw him at your house? A. That is correct.

Q. And then he told you about a shooting match, is that right? A. That is right.

Q. And you said, "Wait until I get dressed and we will go out together and talk it over"; is that it? A. I says I did not want him to talk in front of my wife.

Q. So that the conversation he had with you originally was said to you privately and you immediately stopped the conversation and went out, is that right? A. That is right. As soon as I got dressed I left.

By the Court:

Q. Was there anything said in the presence of your wife by Malinski? A. She probably heard it. I am not sure.

Q. Was there anything said by Malinski to you while your wife was in the same room? A. No, she was in the next room.

By Mr. Solovei:

998

Q. And then you got dressed and you went to the Citadel Club, is that right? A. No, before that there, I only went downstairs. Then he told me about a hat and I went back upstairs and gave him my green one.

Q. You mean he told you about the hat and you went upstairs? A. As soon as we were downstairs.

Q. And then you went back and got the hat for him, is that right? A. That is right.

Q. And then you went to the Citadel Club, is that right? A. That is right.

999

Q. And then he related the story to you as you told it here, about he and Ebbie? A. Beitler, Ebbie.

Q. Ebbie; that he and Beitler or Ebbie, the two of them did some shooting, is that right? A. That is right. He says, "We had a shooting match."

Q. He said and he told you that he and Beitler both fired how many shots? A. I think he said two each.

Q. Two each? A. Yes.

Q. That is four shots in all, two each, is that right? A. Yes.

1000 Q And I think you told us that those shots came from different guns, is that right? A. I don't think I said anything about that.

Q. Did they come from different guns? A. They did.

Q. I think you said it came from a .38 and a .45, did you? A. That is right.

Q. That is what you said on your direct examination, didn't you? A. I don't know whether I was asked that. I don't remember.

1001 Q. And those guns I think you said belonged to you? A. No, never belonged to me.

Q. Aren't they the same guns that you used in the stickup of May 10, 1941, in New York? A. No.

Q. Wasn't there a .38 used there? A. I don't know what was used there. I seen a .38 when I went to the job but I had no part of it.

Q. You had a .38 on you, didn't you? A. I never did.

Q. What caliber gun did you have on you at the time when you went to stick somebody up on May 10, 1941? A. I had no gun at all.

1002 Q. Did Yellin have his gun? A. Yes, sir.

Q. How many did he have? A. Two.

Q. And he kept the two of them for himself? A. No, the other fellow had one, too.

Q. But just you and Yellin were on trial though in New York? A. That is right.

Q. Do you know a man by the name of Joseph Cardinall? A. Cardinall? I don't.

Q. What? A. Did you say Cardinall?

Q. Yes. A. I don't.

Q. You don't know him? A. No.

Q. Now did I understand you to say on your

direct examination that Malinski told you that he and Ebbie both jumped out of the car and fired these shots at the police officer? A. You didn't hear it from me.

Q. Did anything like that—did you say anything like that? A. Not the way you said it.

Q. You tell us how he said it. A. Beitler was on the corner waiting for the cop to come down with the pay-man.

Q. Yes? A. And Malinski was sitting in the car with Jake and when Ebbie gave him the 1004
signal and the pay-man passed him, that is when Malinski came out of the car. He was coming up close to the box.

Q. And while Beitler was on the corner, he said that Beitler fired two shots and he fired two shots, and that is what dropped the cop, is that it? A. Not on the corner. He had to go over towards him.

Q. Beitler walked over to him? A. That is right.

Q. And did he tell you whether or not Beitler was the one who grabbed the paymaster or the 1005
fellow who had the bag with the money? A. He did.

Q. What? A. He did.

Q. He said Beitler grabbed him? A. He went for the money.

Q. And did he say that he helped Beitler grab the money? A. No.

Q. Did he say that he grabbed hold of the man who had the payroll while Beitler grabbed the money? A. He did not.

Q. Well, was there something or words to that effect said to you? A. He did say he was right

1006 outside the car by the door, he says. He hollered to the pay-man, "Stand there—stay there or I will drop you".

Q. That is, Malinski hollered to the pay-man? A. Yes.

Q. Is that right? A. Yes.

Q. And then Beitler was the one who grabbed the pay-man together with the money? A. Yes, sir.

Q. Is that right? A. Yes, sir.

1007 Q. And then he rushed back in the car? A. Malinski was already in the car.

Q. And Beitler then jumped back in the car and they made their getaway, is that what he said happened? A. Yes, sir.

Q. And you remained at the Citadel Club about three-quarters of an hour? A. That is right.

Q. How many people did you find there when you got there? A. There was nobody there. There was only Malinski and myself. You see, they had the whole building, the Citadel Club.

Q. Not a soul there at all? A. There were
1008 people upstairs, guys and girls mushing it up, if you mean that.

Q. Any of your friends over there that you spoke to that night? A. Over there?

Q. Yes. A. No, I did not speak to anybody that I can remember.

Q. Did you see Malinski talk to anybody at the Citadel Club? A. Only to me.

Q. What? A. The only one he spoke to was me.

Q. Outside of you,—did you meet anybody that you knew at the Citadel Club that night? A. I didn't see anybody.

Q. Not a soul? A. We were alone.

Q. How did you go from your house on Lewis Street to the Citadel Club? A. Straight through Columbia Street, down Avenue D to 3rd Street, from 3rd Street to Avenue C, you make a right turn and it is right on the corner.

Q. Did you walk? A. That is right.

Q. While walking from your house to the Citadel Club, did you meet anybody that you knew? A. I don't—

Q. What? A. I didn't meet anybody. 1010

Q. You didn't meet anybody at all? A. No, I didn't stop to speak to anybody.

Q. What? A. I didn't speak to anybody.

Q. Well, when Malinski appeared at your house that morning, your wife was fast asleep, is that right? A. She woke up when he started banging.

Q. What? A. She woke up when he started knocking.

Q. You went to the door and opened the door? A. Yes, sir.

Q. When you say she woke up, she remained in bed? A. No, she got out. 1011

Q. She got up and got out? A. Yes, sir.

Q. She got dressed? A. She was angry. She said, "If you go out now, don't come back. If your friends are more important, go with them."

Q. She wanted you to stay home? A. That is right.

Q. Now you met Beitler later on with Jake? A. When do you mean?

Q. After Malinski left, was that the same night? A. No.

Q. After you and Malinski left the Citadel Club, did you go from there to Essex and Delancy Street where Malinski went home? A. No, sir.

Q. Well, did you go anywheres else from there? A. Yes, sir.

Q. Where did you go? A. We stopped at the Melrose Restaurant for a couple of seconds, and then we went over to 10th Street and Avenue C. We got a bus and we went as far as 9th Street
1013 and First Avenue, the 10th Street Crosstown bus takes you to 9th Street and First Avenue, and Malinski's store happens to be one block away, where he worked.

Q. Yes? A. And he had the keys and he put all the change that was taken on the holdup in the store. He took the change Monday.

Q. You didn't say anything about that on your direct examination?

Mr. McGough: I object to that. A lot of things people say on cross-examination that they do not say on direct examina-
1014 tion.

Mr. Solovei: Is that so?

Mr. McGough: I ask the Court to instruct counsel not to make any comments when I make an objection. Those observations are unfair and are uncalled for.

The Court: Proceed.

Q. You did not say anything about that on direct examination?

Mr. McGough: I object to that.

The Witness: I am not a mindreader—

Mr. McGough: Wait a minute. I have objected to it.

The Court: Go ahead; overruled.

Mr. Solovei: Your Honor does not mean by using your hand, that it is not important?

The Court: I said overruled. I have ruled.

Q. Slip, you did not say anything about that on your direct examination, did you? A. I don't think I was asked that. 1016

Q. He asked you to tell everything you knew about the case and all the conversation you had with the defendant Malinski and you gave it on your direct examination.

Mr. McGough: May I register my objection to that, please?

The Court: Objection sustained.

Mr. Solovei: I except.

The Court: Proceed.

1017

Q. You now say that the reason why you didn't tell that on your direct examination was because you were not asked, is that right? A. (No answer.)

Q. Is that right? A. That is right.

Q. You have been in courts many times and you have had a good deal of experience in courts, haven't you?

Mr. McGough: I object to that as argumentative.

The Court: Objection overruled.

Q. Haven't you? A. What was that question?

Q. I say, you have been in courts many times and had a good deal of experience in courts, haven't you? A. I don't know much about court.

Q. You have been tried several times, haven't you? A. I was tried once—twice, to be correct.

Q. But you were in court at least a dozen
1019 times, weren't you?

Mr. McGough: I object to that.
The Court: Objection sustained.
The Witness: No sir.
Mr. Solovei: Exception.
The Court: Proceed.

Q. You now say that he went over to the place where he worked and you say he put the change in, is that right? A. Yes, that is right.

Q. And you went with him, is that right? A. That is right.

1020 Q. And you went in the store with him? A. I didn't go in the store. I was outside.

Q. You waited outside? A. Yes, sir.

Q. What time of the morning was that? A. I will say about a little after two; maybe ten after two; something like that.

Q. A little after two in the morning? A. Maybe 2:30; around that time.

Q. Well, it was about 1:30 when he first knocked on the door of your house, is that right? A. That is right.

Q. And then you got dressed? A. Yes.

Q. And then you walked over to the club? A. That is right.

Q. And you didn't get there until after 2 o'clock, isn't that so? A. After two? It only takes about five minutes to be exact to walk from my house to the club.

Q. About five minutes? A. Oh, five or six minutes.

Q. And you remained at the club about an hour? A. Not an hour.

Q. How long did you remain at the club? A. 1022
I will say about half an hour; maybe 40 minutes; 30 minutes, something like that.

Q. On your direct examination you said three-quarters of an hour, is that about right?

The Court: Well, he says now 40 minutes. Go ahead.

Mr. Solovei: Yes.

The Court: May I ask a question, please? Was there anything said between you as to why you were to go to the Citadel Club? What was the object of going to the Citadel Club? 1023

The Witness: He wanted to talk to me.

Q. And I believe you said that he told you that the cop was pegging away, is that right? A. After they got in the car.

Q. And then you said that he told you that Ebbie and he grabbed a cab and they went to New York, is that right? A. That is right.

Q. As a matter of fact, you said they grabbed

two cabs, is that right? A. They switched from one to the other.

Q. What? A. First they had one and then they took the other.

Q. And then they split the proceeds over at the club, you told us, is that right?

The Court: He nodded. He did not answer. Answer, please.

The Witness: Yes.

By Mr. Solovei:

Q. Did you say the guns belonged to Red the Tippler? A. I did not.

Q. By the way, Slip, you and Yellin were out to lunch together, weren't you? A. Today? Yes.

Q. Yes. A. Yes.

Q. And who else was out to lunch? A. Mr. Anderson

Q. Who else?

The Court: Who is Mr. Anderson?

The Witness: The gentleman over there.

Mr. McGough: Detective Anderson?

The Witness: Detective Anderson.

By Mr. Solovei:

Q. And who else? A. Eisler, the Tippler.

Q. The Tippler? A. Yes, and Mr. Casey, Detective Casey.

Q. Did Beitler ever go out on jobs with you at some time or another? A. He never did.

Q. He is a good friend of yours? A. He ain't a very good friend of mine. I just know him.

Q. You know him pretty good? A. Just from the neighborhood.

Q. What? A. Just from the neighborhood.

Q. Did he ever supply you with guns? A. Not me.

Q. Not you? A. No.

Q. But you have seen him at some time or another with guns, haven't you? A. I never did see him with guns. 1028

Q. Now on your direct examination you said that you put the guns in the store, is that right? A. What do you mean? When they come out of the cellar?

Q. I am asking you, did you say that? You said before, "I put the guns in the store". Is that what you said? A. In the store?

Q. Is that right? A. In the toilet of the store.

Q. What? A. In the toilet.

Q. You put the guns in the toilet in the store? A. Yes.

Q. When was it that you put the guns in the toilet in the store? A. Saturday morning. 1029

Q. How many guns did you put in the toilet in the store? A. Four, to be exact.

Q. And they were your guns? A. No, sir.

Q. They were Tippler's guns? A. No, sir.

Q. Were they the guns you used on the stickup on May 10, 1941? A. No, sir.

Q. Prior to your conviction and going to jail on this charge, you always carried a gun, didn't you? A. I did not.

Q. Now what time was it that Malinski left you on the morning of February 16th? A. The 16th?

1030 Q. Yes. A. It must have been about four in the morning.

Q. You went from his store, as you said, after he went over there and deposited this change, you then went to Essex and Delancey Street? A. No, sir.

Q. Or the Melrose? A. No, sir.

Q. What happened after that? A. We went to his sister's house.

Q. You went to his sister's house? A. Malin-
1031 ski.

Q. At what address? A. I don't know the address, but I know where the building is. It is on 10th Street.

Q. In New York or Brooklyn? A. New York.

By The Court:

Q. What part of 10th Street? A. Between First and Second; more to First.

By Mr. Solovei:

1032 Q. You mean, you and Malinski went to his sister's house? A. That is right.

Q. Well, you didn't tell us that on your direct examination, did you? A. I don't know whether I did or not.

Q. Did you just think of it? A. I didn't think of it, I had it in my mind all the time because I was there. I know.

Q. Well, from the store where you and he went to, was it the first place that you went after that, his sister's house? A. After he put the change away?

Q. Yes. A. No, first we were across the street by the restaurant.

Q. What restaurant? A. There is a Greek restaurant across the street from the place where he works.

Q. What is the name of that restaurant? A. I don't know the name of it. It is right on 16th Street and First Avenue.

Q. It is not the Melrose you are talking about? A. No, I am talking about First Avenue.

Q. So that is another element you forgot to tell us about? 1034

Mr. McGough: I object to that as an unfair question. It is really an observation.

The Court: All right; he may answer.

The Witness: When I walked in there —what do you want me to remember; everything?

Q. Your memory is pretty good, isn't it?

That is objected to. 1035

The Court: Objection overruled.

By Mr. Solovei:

Q. Isn't your memory pretty good? A. I say fair.

Q. You have remembered almost everything in detail that you say Malinski told you, didn't you, except to these few matters that I called your attention to, you remembered everything, didn't you? A. That is right.

Q. Is that right? A. Yes.

Q. And you carried that in your mind all that time from 1941, February, up to the present time that you were brought here as a witness, is that right? A. No, sir.

Q. But from February 1941 up to the present time you never put those matters down in writing that he spoke about to you? A. I never put that down in writing.

Q. Now when was it for the first time in your life that you told anybody at all about what you
1037 testified to here? A. The first time I spoke to anybody was up in State's Prison.

Q. All right, give us the time. A. I don't know the exact time.

Q. Give us the month. A. I don't know the month.

Q. You cannot give us the month? What year was it? A. I think it was right after I was arrested, after I was up there about say about six months, I guess.

Q. It was after you got your 30 to 60 years, is that it? A. That is right.

1038 Q. Well, see if we cannot refresh your recollection. You got your 30 to 60 years in December of 1941, is that right? A. 1941, correct.

Q. Now you then went to Sing Sing Prison, is that right? A. Yes, after I got my sentence; yes.

Q. Were you at Sing Sing or were you at Dannemora? A. Sing Sing Prison.

Q. Were you all the time at Sing Sing? A. Yes, sir.

Q. Now after you were at Sing Sing, how long were you at Sing Sing when you finally made your first statement to anybody what you

related to and testified to here?" A. I did not make no statement to nobody in there but we were talking about this particular case—

Q. What? A. I was talking to this fellow about this particular case.

Q. Whom were you talking to about it? A. The fellow's name is Lawrence—I just can't think of his second name now.

Q. Don't you know his last name? A. Kurt Lawrence, I think it is.

Q. What? A. Kurt. I know his first name 1040
is Kurt.

Q. Kurt, K-u-r-t? A. K-u-r-t.

Q. Kurt Lawrence? A. I believe that is the name.

Q. Is that one of the inmates up there? A. He was there at the time I was up there.

Q. And he was doing a prison sentence the same as you? A. Yes, sir.

Q. And then you just got in conversation with him, is that right? A. That is right.

Q. How long had you known this Kurt Lawrence before you got into conversation with 1041
him? A. Maybe a couple of months; maybe three months.

Q. What? A. A couple of months.

Q. Just a couple of months? A. Yes.

Q. Your friend Yellin was up there, too, wasn't he? A. He was.

Q. And did he get in the conversation with Kurt Lawrence, too? A. I don't believe he did.

Q. Do you know what Kurt Lawrence was sent up there for, or how long a stretch he had? A. I believe it is from 15 to 30.

1042 By the Court:

Q. I would like to know what happened up at the sister's house. What happened up there when you and the defendant Malinski went from the store, or shortly thereafter, to the sister's house? A. He told me he wants to stake her.

Q. He wants to what? A. He wants to stake her on a few bucks. In other words, give her a few dollars, and he don't want to go home be-

1043 cause the parole officer might be around, so he wants her to talk to the brother-in-law for him to stay there.

Q. I don't understand you; speak up louder. A. He wanted his sister to talk to his brother-in-law so he could stay there for the rest of the night.

Q. At his sister's house, you mean? A. Yes.

Q. What about the parole officer? A. If he went back to Brooklyn, he figured maybe the parole officer would be around at that time in the morning.

Q. Did you actually go with him to his sister's

1044 house? A. I did.

Q. What part of the house did you go to? A. I went all the way up into the house, into the kitchen.

Q. Into his sister's apartment? A. That is right.

Q. With him? A. That is right.

The Court: Go ahead.

By Mr. Solovei:

Q. Do you know his sister's name? A. I

guess it is—I think it is Shirley, if I am not mistaken.

Q. What is her name? A. I think it is Shirley.

Q. Shirley? A. Yes.

Q. Shirley what? A. I don't know the second name. I think it is Pisa.

Q. Pisa? A. Pisa; something like that.

By the Court:

1046

Q. Describe her. A. What was that, sir?

Q. What does she look like? A. She is about 140 pounds, I say, and about 5 foot 5; about 40 years; 38 years of age.

Q. What color hair has she got? Is she blonde, brunette or what? A. I think she is a brunette; I am not sure.

Q. Do you know her nationality? A. She?

Q. Yes. A. Jewish.

Q. Would you recognize her if you saw her? A. I would.

Q. Could you pick her out? A. Sure.

1047

The Court: All right; go ahead.

By Mr. Solovei:

Q. Now did you ever go over to his sister's house before that night? A. Before that night?

Q. Yes? Did you? A. I don't remember.

Q. Did you ever see his sister before that day? A. I did.

Q. So you knew her from before, didn't you? A. I knew her.

Q. You are not giving the Judge a descrip-

1048 *Nathan Spielfogel—For People—Cross*

tion of a lady you saw that night as the sister of the defendant because of the fact that you saw her on that night for the first time, are you? A. It was not the first time I seen her.

Q. And you say this girl Shirley is about 140 pounds and is about 5 foot 5 in height, is that right? A. That is to my thinking.

Q. What? A. That is to my thinking. That is the way I figure it.

Q. You saw her on the street at different
1049 times? A. That is right.

Q. Does she live near you? I mean, at the time in Lewis Street, did she live near you? A. Near me? No, that is about fifteen blocks from where I am.

Q. Fifteen blocks from where you lived at Lewis Street? A. Yes, sir.

Q. What was the street that she lived on at the time? A. Stanton and Lewis.

Q. Stanton and Lewis? A. That I lived at?

Q. No, no, the sister: how far did she live from where you lived? A. About 15 blocks
1050 away from me.

By the Court:

Q. Had you ever been in this house before? A. Before this?

Q. Listen to my question. Listen carefully to what I am asking you. Had you ever been in his sister's house before this early morning hour. Had you ever been there on any other occasion before that time? A. No.

Q. Have you ever been there since? A. Since?

Q. Since. A. I was there after that, too.

Q. You were there after when? A. The next day, Sunday.

Q. But this was the first time you were there on this night after you were at the Citadel Club with the defendant Malinski? A. That is right.

Q. And after you say he went to the store, where he was employed? A. That is right.

Q. Now what kind of a building is it where his sister lived at that time? A. Just a few steps to go up. I think a four-or-five-story 1052
building; I believe it is four-story building.

Q. On what floor did the sister live? A. I think it was the third, to the back.

Q. In the rear? A. Yes, on the left-hand side.

Q. On the left-hand side? A. Yes.

Q. On the left-hand side as you go up in the hall? A. When you go up the steps—

Q. Describe it in your own way. I want you to give me a description of the place that you say you were in on the morning after this policeman was killed. A. That is right.

Q. Give me a description of the place. A. 1053
The inside?

Q. Tell us in your own words what the place looked like, what floor the apartment was on, what room you entered; a description of the place that you saw there, and tell us something about it. A. Well, before you enter the building, you walk up about four steps and then you enter the building.

Q. Which side of the street; is it on the south side or the north side? A. On the up town side.

Q. That is the north side of the street? A. See, the store is right around the corner.

Q. This is on what street? A. Tenth Street.

Q. Tenth Street runs east and west? A. Yes.

And one side of the street is the north side and one side is the south side? A. Yes.

Q. The up town side is the north side and the down town side is the south side, is that right? A. I know it is on the up town side.

Q. It is on the side nearest 11th Street? A.
1055 Yes, sir.

Q. Between what avenues is the sister's house located on? A. What avenues?

Q. Yes. A. Between First and Second Avenue on 10th Street. It is more to First Avenue.

Q. Nearer to First Avenue? A. That is correct.

Q. And give us a description of the house, if you remember it? A. It was about three flights up, on the left-hand side to the rear. As soon as he opened the door, there was a kitchen. You step right into the kitchen.

1056 Q. You go right into the kitchen? A. Yes.

Q. Yes? A. You mean, I should say what I saw there?

Q. Tell us what you saw and what happened there. Give us a description of the place. A. All I seen him do is talk to his sister and I walked to the sink and took a drink and walked back out to the hall. I felt I was not wanted as he wanted to talk to her private.

Q. But you were actually in the kitchen? A. That is right. It was dark and they did not have the lights on and he spoke to her a few minutes and then I heard him say when I was out in the

hall, "Get back to bed", to somebody; I don't know who he was talking to.

The Court: Go ahead, Mr. Solovei.

By Mr. Solovei:

Q. You have seen the defendant Malinski around his sister's house on many occasions, haven't you, or in front of his sister's house, haven't you? A. In front of the sister's house?

Q. Yes. A. A couple of times in front of his 1058
sister's house.

Q. So when you are giving the Judge a description of what kind of a house it is and where his sister lived— A. Something like that—

Q. —you knew where she lived all the time? A. Sure, I knew where she lives.

By The Court:

Q. You say you were up in the sister's house the next day, too? A. That is right.

Q. With whom? A. With Malinski. 1059

Q. That would be Sunday? A. Yes, Sunday.

Q. How did you come to go there on Sunday? A. His girl was living up there and he wanted to speak to her.

Q. He wanted to speak to his girl? A. Yes, that is right.

Q. Living in his sister's house? A. That is correct.

Q. Did you go with him there? A. That is right.

1060 Q. Did you actually go into the apartment? A. I did not.

Q. Where were you on Sunday? A. Down at the stoop.

Q. What I am trying to get at is this, gentlemen, addressing Counsel. How many times were you actually in his sister's house, upstairs in the apartment; on how many occasions? How many times. A. I believe that same Sunday I called him down. He was up there a little too long. He
1061 said he would be down in five minutes and I walked up half an hour later and he was chewing the rag with his girl.

Q. Did you actually go into the apartment? A. Yes, sir.

Q. On Sunday? A. Yes, sir.

The Court: Proceed

By Mr. Solovei:

Q. And you say he was talking to his girl? A. Yes, sir.

1062 Q. Is that the young lady he later on married? A. No, the girl's name is Jean.

Q. Not the same girl that he is married to? A. No.

Q. You told us something about the Parole Board, that he was worrying about the Parole Board you said, is that right? A. That is right, not the Parole Board, the parole officer.

Q. The parole officer? A. That is right.

Q. Do you know that the next day was on a Sunday and there is no parole officers around on

Sunday, don't you? A. They are around all the time.

Q. You know that from your experience? A. I know that.

Q. What time was it that you met him on Sunday? You have not given us the time. What time was it that you met him on Sunday? A. About, I would say about ten o'clock.

Q. In the morning? A. (No answer.)

Q. Do not shake your head. A. Yes.

Q. And where was it you met him at ten 1064
o'clock in the morning? A. Right up in my own flat.

Q. At your house? A. That is right.

Q. On Sunday morning? A. Yes, sir.

Q. You were alone there that morning? A. My wife and child.

Q. Your wife and child were there that morning? A. Yes.

Q. He left you, according to your testimony on direct examination at four o'clock in the morning at Essex and Delancey? A. Yes, sir.

Q. And he went home? A. Yes, sir. 1065

Q. And he got up and met you the next morning at ten o'clock? A. Yes, sir.

Q. Did you have it prearranged to meet him at ten o'clock in the morning? A. Yes.

Q. He was to meet you at ten o'clock at your house? A. Yes, sir.

Q. And did he again repeat to you everything that happened, at ten o'clock, or was there some other conversation? A. There was other conversation.

Q. Nothing at all about this case now? A. It was not about the case.

Q. I say, there was not a word said on Sunday morning about this case, is that right? A. About the case?

Q. Yes. A. There was conversation about the case.

Q. A minute ago you said there was nothing said about the case. Now which is it? A. There was a lot said all Sunday.

Q. That was not in your house? A. Not in my house.

1067 Q. You mean after you left your house, there was some more conversation about it? A. About who took part in the thing and like that.

Q. And he again repeated to you everything that transpired on the evening of February 15, 1941, is that right? A. He did not.

Q. He did not repeat everything? A. Not everything.

Q. But he went over many details of the crime, is that right? A. Yes, like bringing out the way the cop laid there, that he says, no dog, he pegged it out with him.

1068 Q. He told you all about that? A. Yes, sir.

Q. Now you told us, I think you said something about Rudish, did you say brought back the license plates, is that right? A. That is right; that is what he told me.

Q. That is what he told you; that Rudish brought back the license plates, is that right? A. Yes, sir.

Q. And I assume the license plates from the car that did the job? A. Not from the car that did the job. That was the extra set of plates, to put them on the hot ones.

Q. That is the extra set of plates that you put on the hot ones? A. Yes.

By the Court:

Q. What does "hot ones" mean? A. Like somebody keep their cars in open lots and you walk in there and take the plates; if you want to go out and do the job, you put the legitimate plates on it.

Q. What do you mean by "legitimate"? A. 1070
Once a car is laid up in one of them kind of places the fellow don't use the car most of the time so they take them plates off and put them on the car that was stolen. That is the way they cannot trace you.

By Mr. Solovei:

Q. You have done that on many occasions, haven't you, Yes or no? A. No.

Q. You never did that? A. No.

Q. Of course if it became necessary to do such a thing, you would not hesitate to do it, would 1071
you? A. What is that?

Q. I say, if it became necessary for you to do that in order to make a getaway, you would not hesitate in doing that? A. I never did it.

The Court: He means, if you had to do it.

The Witness: No, I wouldn't do it.

Q. You would not do it? A. No, sir.

Q. You go out and stick up a poolroom with a half a dozen people in it, and you would not

1072 *Nathan Spielfogel—For People—Cross*

put on an extra pair of plates? A. I would not take a pair of plates from somebody else.

Q. You would not stoop so low as to take a pair of plates? A. Not that I would not stoop.

The Court: Please do not try to outshout the witness.

The Witness: He can holler; that is all right.

1073 The Court: Please do not outshout the witness. Let us get an answer, because a question without an answer is meaningless.

Mr. Solovei: That is right.

The Court: Give your answer. Mr. Solovei asked you if you would not stoop so low as to take plates. Answer that question.

The Witness: I never took plates.

The Court: What he wants to know is if you would do it if it became necessary.

The Witness: Yes.

1074

By Mr. Solovei:

Q. You told us a little while ago that when you do a job, you want to do a clean job to make sure that you can get away, didn't you? A. That is right.

Q. And by a job, of course you understand I mean a holdup or a stickup or whatever crime may be necessary when you are out, is that right? A. I didn't get everything you said.

Q. I say you understand what I mean when I say a job, I do not mean a legitimate job;

I mean a job that you sometimes go out on for a holdup or a stickup? A. That is right.

Q. Well, you now say that the plates that you talked about were not plates that were on the car, but that they were a separate pair of plates; is that right? A. That is right.

Q. And you also told us on your direct examination that they got something like $220 apiece, but Malinski said he got an extra double sawbuck, to use your exact language? A. Yes, that is right. 1076

Q. Meaning an extra $20? A. That is right.

Q. You did not get any part of it, did you? A. Not a quarter.

Q. I want to get this one thing cleared up here; that talking to Lawrence in the Sing Sing Prison, you said that was the first man you ever spoke to in your life about what you testified to here today, is that correct? A. I didn't tell him everything.

Q. I said, that is the first man you spoke to about this case in your life until you came here today, other than what you said? A. You mean after I was in prison already? 1077

Q. Yes. A. After I was confined.

Q. Yes. A. After I was confined, yes.

Q. Before your talking to Lawrence, you never said a word about this case at all, is that correct? A. I believe I mentioned it to one other fellow.

Q. Well, now, who is this other man you spoke to other than Lawrence about this case, and when? A. At Sing Sing Prison.

Q. What is his name? A. Sam Kovner.

Q. Kovner? A. Kovner, I guess it is.

1078 *Nathan Spielfogel—For People—Cross*

Q. And what sentence did he get up there? A. I think he got 15 to 30.

By the Court:

Q. Do you know the name of the Judge that gave him the sentence? A. I believe it was Mr. Brancato.

By Mr. Solovei:

1079 Q. Who gave the other fellow the sentence, Lawrence? A. Mr. Brancato.

By the Court:

Q. Are you sure it was not Judge Leibowitz that gave him the sentence? A. I am not sure.

By Mr. Solovei:

Q. Were Kovner and Kurt together when you told them about this case? A. No, sir.

1080 Q. Well, how did you come to talk to Lawrence or Kovner about it? A. Kovner used to eat with me at the same table.

Q. And you became very friendly? A. Yes.

Q. Did you talk to him about it before you spoke to Lawrence? A. I spoke to Lawrence first.

Q. Well, would you say that that conversation was had around the summer of 1942? A. December?

Q. The summer of 1942. A. No, about three months after I was up there; around March, I guess.

Q. You said you spoke to him about six months after you got up to Sing Sing? Didn't you tell us that? A. Yes, about that.

Q. Now you were sentenced on December 12th, 1941, is that right? A. That is right.

Q. So that if you spoke to Lawrence six months after that, it would be around May of 1942, is that right? A. No.

Q. May or June? A. I wasn't there long when I spoke to the kid; I wasn't there long in Sing Sing. 1082

Q. How soon after you spoke to Lawrence or Kovner did you come down here to New York? A. After I spoke to Lawrence, I guess about seven months later; I guess; I am not sure.

Q. That would make you coming down to New York around, would you say it was around November or December of 1942? A. I came down October 20th or 18th; around that time.

Q. October? A. October 18th or 19th; I don't remember the exact date.

Q. You remember the month? A. October.

Q. October 1942? A. Yes. 1083

Q. And when you came down from Sing Sing, did Yellin come down with you? A. No, sir.

Q. Were you the first man to be brought down from Sing Sing or was it Yellin? A. I was.

Q. And when you came down from Sing Sing in 1942 did you go to the District Attorney's office? A. I did not.

Q. How were you brought down, by automobile? A. Yes.

Q. Who brought you down? A. Mr. Heffernan.

Q. Who? A. Mr. Heffernan.

Q. Heffernan? A. Yes.

1084 Q. The Assistant District Attorney? A. Yes. I don't know if he is an Assistant District Attorney. I think he is an investigator.

Q. He is a heavy-set fellow? A. The man that was sitting in the box.

Q. That is an Assistant District Attorney? A. Yes.

Q. And who else? A. Lieutenant McNally.

Q. Yes? A. I believe Bill Casey. That is about all.

1085 Q. And what time was it that you left Sing Sing in that automobile when you came to Brooklyn? A. I left in the afternoon.

Q. And what time did you arrive in Brooklyn, if you know? A. Say about three hours later.

Q. I mean, did you go right to the Hotel Bossert? A. Yes, that is right.

Q. And did you have your dinner there that night? A. Yes.

Q. Did you remain there that night? A. I did not.

1086 Q. Before October 1942 somebody from the District Attorney's office or the Police Department spoke to you about this case while you were up in Sing Sing, isn't that correct? A. That is correct.

Q. And when they came up to talk to you about this case, you told them that you didn't know anything about the case, isn't that right? A. I didn't say that.

By the Court:

Q. What did you say? A. I says I ain't go-

ing to hurt anybody. I ain't going up to testify against anybody.

By Mr. Solovei:

Q. You told them you don't know anything about it? A. I said I don't want to know anything about it. I said, "I am doing 30 to 60; leave me alone."

Q. Didn't you say you don't know anything about the case? A. I never said that.

1088

Q. Did you make a statement to anybody up there then? A. Never made a statement.

Q. Did they examine you up there? A. Examine me?

Q. Yes.

The Court: Use language that he will understand.

Q. When I say "examine", did they ask you questions up there? A. They did.

Q. Who asked you questions up in Sing Sing? A. Mr. Heffernan and Lieutenant McNally. 1089

Q. And when was that? A. I guess it was about two weeks before they brought me down.

Q. And would you say it would be around September of 1942, or in October 1942, the early part? A. I think it was still October, if I am not mistaken.

Q. And they came up there and you were in the Warden's office, were you? A. I was not.

Q. Or some private room? A. That is right; I was in the visiting room.

Q. How long were they talking to you? A.

Not long the first time because I had nothing to say.

Q. Was Yellin there, too? A. He was not.

Q. Do you know whether they spoke to Yellin at that time? A. As far as I know, no.

Q. So that as I understand the first time Mr. Heffernan and Lieutenant McNally spoke to you, you said nothing at all about this case, is that right? A. I just listened. I just sat there and listened.

1091 Q. You sat there and listened, is that it? A. Yes, sir.

Q. You said nothing about the case, is that right? A. Not at that time; I don't remember saying anything.

Q. Then you were brought down to the Hotel Bossert by Mr. Heffernan and somebody of the other officers, around the latter part of October 1942, is that right? A. No.

Q. What? A. No.

Q. You were not brought down? A. Not then.

Q. What? A. The first time they come up and see me, they went away. Then Lieutenant

1092 McNally come back himself, I imagine about a couple of days later, I think it was two or three days later and called me out again and he started throwing a lot of questions at me, showing me what he knew about the case. He says, "I will take you down and I will talk to you. If you don't want to say anything, you will come right back," so I says, "If you want to take a gamble and take me down, go ahead," I told him.

Q. He started in throwing questions at you and you were scared that he might stick you

into this murder, you and Yellin? A. I was not afraid of nothing.

Q. You didn't think he had anything like that in mind? A. I know he didn't.

Q. So it came a time that he took you down to Brooklyn, the latter part of October, 1942, is that correct? A. That is about the date, around October.

Q. It was towards the end of October, wasn't it? A. I don't remember exactly. I know it was in October. 1094

Q. While you were in the automobile with Heffernan, Assistant District Attorney Heffernan and Lieutenant McNally and one or two other officers that you mentioned, did you talk to them in the car? A. I didn't talk to anybody in the front of the car. They had the window closed. I only spoke to McNally.

Q. Were you sitting in the front? A. In the back.

Q. With McNally? A. And Mr. Heffernan.

Q. And while you were in the car, riding with Mr. Heffernan and Lieutenant McNally, did they ask you about the case then? A. They did not. 1095

Q. Not a word of conversation about the case? A. No conversation I can remember.

Q. For two and a half hours, riding from Sing Sing to Brooklyn, neither Assistant District Attorney Heffernan or Lieutenant McNally asked you anything about the Fox murder case, is that right? A. That is about it.

Q. Now I take it the first time you ever spoke to Mr. Heffernan about the Fox murder case was at the Hotel Bossert, is that correct? A. That is right.

Q. So that when you were at the Hotel Bossert, you sat down and spoke to Mr. Heffernan, is that right? A. To him and Mr. McNally.

Q. Were you seated at a table? A. I was sitting on a couch.

Q. And while sitting on the couch talking to Mr. Heffernan, you told him the story as you know it, is that right? A. I still didn't tell him nothing.

Q. What? A. I still didn't tell him nothing then.

Q. You didn't tell him nothing at that time? A. No.

Q. Well, did you finally go out to dinner? A. I ate up there.

Q. After dinner, did you talk to them? A. Yes, I talked to him.

Q. And was it after dinner that you told him all about this case? A. No.

Q. Was it the same day that you were brought down that you told him all about this case? A. I don't believe so.

Q. You finally left the Hotel Bossert and went somewheres, didn't you, with the detectives? A. To Jail.

Q. What Jail did they take you to? A. I think it was 161st Street.

Q. 161st Street? A. Yes.

Q That is the Jail that you are presently incarcerated in? A. Yes.

Q. Is that correct? A. Yes.

Q. While going up to the Jail, did you go with Lieutenant McNally? A. Up to the Jail?

Q. Yes. A. Yes.

Q. And did he talk to you on the way up? A. He did.

Q. And you still said you knew nothing about the case? A. I didn't say I don't know anything.

Q. You didn't tell him anything about the case, is that right? A. I didn't tell him anything.

Q. On the following day, did they bring you back to Brooklyn again? A. The following day?

Q Yes. A. I think the following day they took me to Raymond Street. I think so; I am not sure. 1100

Q. Well, from Raymond Street did they bring you back to the Hotel Bossert? A. Yes.

Q. What time did you get to the Hotel Bossert for the second time? A. In the afternoon; some time.

Q. And did you see Assistant District Attorney Heffernan there? A. I did.

Q. And Lieutenant McNally and some other detectives there? A. Yes.

Q. And the detectives all spoke to you? A. I didn't speak to all of them. The only one I spoke to is McNally. 1101

Q. Didn't Detective Bell talk to you? A. Bell?

Q. Yes. A. Yes, I spoke to Bell, too.

Q. Didn't Detective Salarno talk to you? A. Not at the time.

Q. What? A. Not that time.

Q. Did he talk to you around that time? A. After they arrested Malinski.

Q. Not before that? A. Not that I can remember.

Q. You came down from Sing Sing according to the record that I have in my hand, October 14, 1942, is that correct? A. October 14th?

1102 Q. Yes. A. It could be about that time.

Q. And October 15, 1942, you went before the Grand Jury, didn't you? A. I never went in front of no Grand Jury.

Q. You never appeared before the Grand Jury?

The Court: He said so; go ahead.

The Witness: That is right.

The Court: Please, Mr. Solovei, pro-

1103 ceed.

Mr. Solovei: All right.

The Court: Let us try to save some time by not repeating the answers in the next question.

By Mr. Solovei:

Q. Well, you were brought down to Brooklyn again on October 15, 1942, is that correct? A. What was that?

Q. You were brought back to Brooklyn here on October 15, 1942, and you remained in Brook-

1104 lyn from 11:30 a. m. until 10:30 p. m., is that right? A. I don't know what you mean.

Q. You say you went up to the 161st Street Jail when you were brought down from Sing Sing, is that right? A. That is right.

Q. And that was around, according to the records here, October 14, 1942? A. About that.

Q. Now October 15th, you were here in Brooklyn from 11:30 a. m. to 10:30 p. m., is that right? A. October 15th?

Q. Yes. A. From what time?

Q. From 11:30 a. m. in the morning until

10:30 p. m., is that correct? A. I don't know. I don't know the exact hours I was out.

Q. Well, were you being examined and questioned from 11:30 a. m. until 10:30 p. m.? A. Questioned?

Q. Yes.

The Court: Does that indicate when he left the Jail at 161st Street in the Bronx, at 11:30?

Mr Solovei: Let the Judge see that. 1106

The Court: I do not want to see that. It will take some time to get back to 161st Street from Brooklyn. Does that indicate when he left the Jail and came back?

Mr. Solovei: What I can gather is when he left and returned. I suppose that probably an hour is for traveling either way.

The Court: All right.

Q. Now can you tell us, Mr. Spielfogel, when it was that you first made the statement to anybody at all from the District Attorney's office? 1107 Can you give us the date? A. The way I figured, it should be about a couple of days before Malinski was arrested.

Q. Well, now, I will refresh your recollection from what I have. Malinski was arrested on the 23rd day of October. I think he was arrested on October 23, 1942. Do you understand that? You say you made your statement a few days before he was arrested, is

that right? A. I imagine it was a couple of days.

Q. What? A. A couple of days before.

Q. Now would you say that you made your statement around the 18th, or 19th or 20th, either one of those days, to give you plenty of leeway? A. I don't remember.

Q. What? A. I don't remember what day it was.

Q. You left the 161st Street Jail on a number of occasions when you did not return at all back to the Jail, isn't that right? A. That was for official business.

Q. You had official business? A. I was taken up to certain places up-State.

Q. Up-State? A. That is right.

Q. And you went out on official business? A. That is right.

Q. How many times did you go out on official business that you did not return back to the 161st Street Jail? A. I returned.

Q. Not the same day, the next day you returned, is that right? A. I was out all day.

Q. What? A. I was out all day.

Q. All day and night, and you came back the next evening? A. I slept in 161st Street. That is the only place I slept. When I went out of there, I did not sleep out of there.

Q. On November 6, 1942, you left the 161st Street Jail and you did not return until 2:30 a. m. the next day. Were you out on official business then? A. (No answer.)

Q. Were you out on official business then? A. All I know I was up-State one day.

Q. Up-State? A. Yes.

Q. While you were at the Jail, did you visit your family? A. Visit my family?

Q. Yes. A. To see my wife, yes.

Q. You visited your wife? A. Yes.

Q. Where did you visit your wife? A. At my house. My wife and son.

Q. And how many times did you do that? A. About two or three times.

Q. And how many hours did you spend with your wife? A. Hours? I say minutes; about fifteen minutes maybe each time. The only thing 1112
is Mr. McGough let me go home and see my son. He was sick. I asked him for permission and he gave me the permission, and he let a couple of detectives go with me.

Q. You were also at the Bellevue Hospital? A. I was.

By The Court:

Q. Is that where your child was? A. No, he was home sick.

Q. What brought you to Bellevue Hospital? A. I was sick. 1113

Q. You were sick? A. Yes.

The Court: Proceed.

By Mr. Solovei:

Q. You made several trips to the Bellevue Hospital, didn't you? A. I was sick; upset.

Q. Do you know how many trips you made to the District Attorney's office? A. Oh, a lot of times.

Q. What? A. Quite a number of times.

1114 Q. Now you actually made a statement to Assistant District Attorney Heffernan sometime in October, 1942, is that right? A. A statement?

Q. You did not? A. No. All I remember is—

Q. Did you make a statement?

The Court: The word "statement" may not be intelligible to this witness. Use language that he will understand.

1115 Q. Well, did there come a time in October 1942 when you told Assistant District Attorney Heffernan what you knew about this case? A. I didn't tell Heffernan; I told McNally.

Q. Was Assistant District Attorney Heffernan present? A. I think so.

Q. And was a stenographer present? A. Not that I remember.

Q. Did somebody take down what you said? A. No, sir.

Q. At any time? A. No, sir.

Q. You told them everything that you testified to here, is that right? A. Not everything.

1116 Q. Well, did you withhold something from them? A. (No answer.)

Q. Did you withhold something from them? A. Yes.

Q. Didn't you at that time determine that you were going to tell the truth and tell everything you knew about the case? A. No.

Q. You did not? A. No.

Q. You still wanted to withhold something from them even then when you decided to tell the truth? A. Yes.

Q. You were told, weren't you, by the police

officers, that in order for you to get any help or assistance at all, they want you to tell the truth and tell them everything that you know about the case? Didn't they tell you that? A. What do you mean by help?

Q. Well, I mean some help for yourself. A. Not me. I was never promised anything.

Q. You got 30 to 60 years and you do not expect any help or assistance from anybody, is that right? A. That is right.

Q. You just all of a sudden are coming here 1118
to tell everything you know about this case, is that right? A. That is right.

Q. And you have no ill-feeling against Malinski, have you? A. Ill-feeling? I don't know what you call it.

Q. What do you call it? A. Just want to tell the truth and get it over with.

Q. You and Malinski have been on the outs for some time, haven't you, Slip? A. No.

Q. You accused Malinski of taking your wife out, didn't you? A. I never did.

Q. Didn't you accuse him of that? A. Never. 1119

Q. Didn't you know that your wife went up to see Malinski? Didn't you know that your wife went up to see Malinski's sister and say if she does not get $500 that she will see that he goes to jail? Don't you know that?

The Court: You are assuming that that happened and you are asking him if he knows about it.

Mr. Solovei: I will withdraw that.

The Court: That is a very unfair question.

1120 Q. Did you know that your wife went to Malinski's house, or his sister's house?

Mr. McGough: What is her name?

Q. To Mrs. Daniels' house and said that she wants $500 from them otherwise she is going to make trouble or see that trouble is made?

By The Court:

1121 Q. Were you told any such thing as that? A. Something like that; but not exactly what he said.

By Mr. Solovei:

Q. Something like that but not exactly? A. She told me she was over there.

Q. And she told you she asked for $500, didn't she? A. She did not.

Q. Did she tell you whether she asked for any money or not? A. She did not.

1122 Q. Do you know when she said she was there? A. She told me she was there a couple of times; a few times.

Q. Do you know now whether or not you ever made a statement—

The Court: I will let you pursue it to your heart's content, Mr. Solovei. I will let you pursue it further, if you desire. Do you want to show any motive on the part of this witness?

Mr. Solovei: Yes.

The Court: You may go the limit on it.

By Mr. Solovei:

Q. Now, Slip, you did, did you not, on a number of occasions accuse Malinski of having intimate relations with your wife, didn't you? A. I never accused him of any such thing.

Q. Did you suspect him? A. Suspect him? Never.

Q. Did you send your wife to Malinski's family home? A. I never sent her.

Q. When she visited you at the Jail, she told 1124
you that she went to Mrs. Daniels', Malinski's sister's home, didn't she? A. She did.

Q. And she told you that she made several visits there, isn't that right? A. A couple of times.

Q. Did she tell you she tried to get some money from Malinski's family? A. Not from Malinski's family but from Malinski. He sent her some money.

Q. She told you she tried to get some money from Malinski? A. He did send her some money.

Q. He did send her some money? A. Yes.

Q. How much money did he send her? A. I 1125
guess it was about $3 every two weeks.

Q. And that was while you were in Jail? A. That is right.

Q. And then Malinski stopped sending her money, isn't that right? A. That is right.

Q. And she came to you and told you that Malinski stopped sending her money, isn't that right? A. That is right.

Q. And then she said she went to Malinski's sister's house to try to get some money, is that

correct? A. She went to Malinski's sister's house but she spoke to Malinski himself.

Q. And she tried to get some money out of him there again, is that right? A. She asked him for money.

Q. And Malinski turned her down, didn't he, at that time? A. He did.

Q. And then she made several other trips and Malinski again turned her down, isn't that right? A. Not that I can remember. She didn't
1127 make any more trips after that.

Q. You were a little bit sore over the fact that your friend Malinski turned your wife down for a few dollars every week? A. If I saved your life a couple of times I would say that.

Q. You were sore, weren't you? Won't you answer the question? A. A little.

Q. And you thought, that Malinski being your pal, and friend, that he ought to help maintain and support your family with a little bit anyhow, isn't that right? A. Yes, that is what we had made up between us if anyone of us got
1128 pinched.

Q. And then it was after that that you got sore, that you refused—that you came down and made this statement against him, is that right? A. I didn't make no statement.

Q. I say, but it was after Malinski refused to further support or help to support and maintain your family, or give your wife some money, it was then some time in October of 1942 that you came down and told Assistant District Attorney Heffernan or Lieutenant McNally, all about

this case, isn't that right? A. I didn't tell them all about it, I am telling you.

By the Court:

Q. At first you refused to say anything? A. That is right.

Mr. Solovei: May I ask the District Attorney, through your Honor, whether or not there is a written statement by this witness? 1130

The Court: Yes.

Mr. McGough: I will be glad to make a statement for the record.

The Court: Mr. McGough, what do you wish to say?

Mr. McGough: There is no "Question and Answer" statement of this man at all.

The Court: There is no stenographic statement?

Mr. McGough: No stenographic record. There are some memorandums that 1131 were given to me and I have them here.

The Court: But no "Q and A" statement?

Mr. McGough: No "Question and Answer" form at all. If I had them, I would be glad to turn them over, as your Honor knows.

Mr. Solovei: May I, in addition to what I asked, your Honor, is there any stenographic record or typewritten record taken down by a Police stenographer or

1132 *Nathan Spielfogel—For People—Cross*

by the Police Department, which was turned over to the District Attorney?

The Court: Is there any stenographic or typewritten statement?

Mr. McGough: I have subpoenaed every Police record and I find none.

The Court: Proceed.

By Mr. Solovei:

1133 Q. Slip, do you remember when you took Malinski to your house for the purpose of asking your wife whether or not he had intimate relations with her, and then there was some trouble and you hit your wife in the eye and gave her a black eye? Do you remember that day?

The Court: Now you see, Mr. Solovei—

The Witness: No such thing ever happened.

The Court: Please do not ask questions in that form. I know you do not do it intentionally.

1134 Mr. Solovei: I do not.

The Court: When you ask a man if he remembers whether he did so-and-so, you are assuming he did; just like asking a man, "Do you remember beating your wife," and he says "No". That means that he beat his wife but he does not remember the day. Ask him if he did that.

By Mr. Solovei:

Q. Didn't you bring Malinski to your house for

the purpose of satisfying yourself that he never had relations with your wife, and that he and she denied it; that you hit her in the eye and gave her a black eye? A. That is a lie.

Q. Nothing like that happened? A. Never.

Q. And do you remember meeting Malinski coming out of one of the barber shops in the City of New York—

Mr. McGough: Objection.

Mr. Solovei: I withdraw it. 1136

The Court: Proceed.

By Mr. Solovei:

Q. Isn't it a fact that you and Yellin— A. What?

Q. Isn't it a fact that you and Yellin had guns with you one day and you said to Malinski, "We have got a good mind to kill you because you have had Spielfogel's wife"—meaning your wife? A. That is a lie.

Q. Nothing like that happened? A. No.

Q. Do you know a street or are you familiar 1137 with a house at 325 East 101st Street, New York City? A. Familiar with a house?

Q. Is there any house around there that you are familiar with at 305 East 101st Street where a man by the name of Jim lives? A. Jim?

Q. Yes. A. 101st Street?

Q. I withdraw that. Do you know a man by the name of Jim, of the Yorklen Club, at 305 East 101st Street? A. I don't know.

Q. Do you know the house? A. No.

Q. Do you know the club? A. No, I don't know it.

Q. Do you know a Joseph Cardinall? Do you know that name, Cardinall? A. Cardinall?

Q. Yes, Joseph Cardinall. A. I don't know him.

Q. Cardinale? A. Cardinale? No.

Q. Well, this fellow Kovner that you spoke about, you knew him before you went up to Sing Sing, didn't you? A. I never spoke to him before I went.

Q. You knew him? A. I never spoke to him.
1139 I knew him to see him.

Q. I said, you knew him, didn't you? A. Yes, I knew him; sure.

Q. You knew him from around the East Side? A. From the East Side, yes.

Q. He was a friend of Beitler's, wasn't he? A. A good friend.

Q. A good friend of Beitler's? A. Yes.

Q. You were up in Elmira, weren't you? A. Yes.

Q. And while up in Elmira, you were placed in the Psychiatric Ward? Do you know what I
1140 mean by that? A. The Bug Ward.

Q. Yes. A. I was up there out of population but what I called it like, I asked the Warden up there why I was put in there. I was only a short time when I was put in there.

Q. You were in the what you call the Bug Ward, weren't you? A. Well—

Q. Weren't you? A. That is what they call it, I guess.

Q. And you were there for some time, weren't you? A. I guess I was there about seven or eight months.

Q. Seven or eight months? A. That is what I figured.

Q. And you were being treated there by the doctors, weren't you? A. No, never treated.

Q. You were in there with the rest of the bugs, is that right? A. I didn't see no bugs there.

By The Court:

Q. Were you in any Bug Ward up in Sing Sing, where you are now? A. Not me. 1142

By Mr. Solovei:

Q. You are all right now? A. I always was.

Q. You were also examined in New York by Dr. John H. Cassidy, weren't you? A. Cassidy? I don't know him.

Q. A doctor examined you that examines "Bugs". I mean crazy people.

By the Court:

Q. Isn't there a doctor that examines every prisoner in General Sessions before they sentence them? A. Yes. 1143

Q. Every prisoner, before he is sentenced, is examined? A. By a psychiatrist.

Q. By a psychiatrist? A. That is right.

The Court: Is that Dr. Cassidy that you have reference to?

Mr. Solovei: I suppose it is.

The Court: Every defendant is examined. They do not do that here in Brooklyn, although they should. Over in Man-

144 hattan, they have a regular psychiatric bureau. Every prisoner, no matter what the crime is, goes through that process of being examined and a report is given to the Judge. That is common knowledge, Mr. Solovei.

Mr. Solovei: I think that is right.

The Court: All of us know that.

By Mr. Solovei:

145 Q. Slip, you made certain statements to the doctor when you were being examined? Do you remember that? A. Yes.

Q. And you lied to the doctor, didn't you? A. Lied?

Q. About the statements that you made to him? You didn't tell him the truth? A. I guess not.

Q. You guess not? A. That is right.

Q. Now coming down to the time when you were at the Hotel St. George, you say you overheard—

146

Mr. McGough: The St. George?

Q. The Hotel Bossert, and you overheard Malinski make some sort of a statement; is that right? A. That is right.

Q. Now do you know when that was, the date? A. I imagine it was about two weeks after I was down.

Q. Two weeks after you were down? A. Yes.

Q. How many police officers were at the Hotel

Bossert when Malinski was being questioned by the police? A. How many?

Q. Yes. A. I imagine about four or five.

Q. Lieutenant McNally was there? A. Yes, sir.

Q. Detective Bell was there? A. Yes, sir.

Q. Detective Salarno was there? A. Yes, sir.

Q. Detective McNally was there? A. Yes, sir.

Q. Detective Low was there? A. I don't know if he was there.

Q. Is that right? A. I think he was; I don't 1148
know.

Q. Was Detective Anderson there? A. No, sir.

Q. Now we will say at least five detectives were there, is that right, at least five? A. About four or five.

Q. And you were there while Malinski was there in the morning, is that right? A. Not in the morning.

Q. On the day he was being questioned? A. It must have been in the afternoon.

Q. I mean, before that, weren't you there in 1149
the morning? A. Before that?

Q. Yes. You remember the morning of October 23, 1942, when you were at the Hotel Bossert in the morning of that day? Do you remember that?

The Court: He said he was not there in the morning. Ask him if he was there in the morning.

Q. Were you there on October 23, 1942? A. Is that the date Malinski was arrested?

Q. Yes. A. I was there in the afternoon about two o'clock.

Q. Weren't you there in the morning? A. I was not.

Q. You were transferred on the 19th day of October, 1942, to the Fifth District Prison, is that correct? A. That is correct.

Q. What? A. That is correct.

Q. The day Malinski was arrested, were you at the Hotel Bossert? A. The day he was arrested?

Q. Yes. A. That is when I was brought out of the 121st Street Prison.

Q. You were in one of the private rooms at the Hotel Bossert and Malinski was in another room, is that right? A. I was in the same room with him.

Q. But there were many times that you were in a separate room, wasn't there, in the morning? A. I was in the same room with him.

Q. Weren't you brought in later on into the same room? A. What do you mean?

Q. First you were alone in a separate room and then later on you were brought into a room where Malinski was? A. When I come up from the 121st Street Jail, I was brought right in front of him.

Q. When you were up there, when you were brought into the same room, Detective McNally or other detectives told you, did they not, that Malinski said that he had nothing at all to do with this crime? Didn't they tell you that? A. They didn't say that but they says, "Wait until you come in front of him and let him say what he said before."

Q. You mean let Malinski say what he said before? A. Yes.

Q. Well, they told you that Malinski before that said that he had nothing to do with the crime, is that correct? A. Something like that.

Q. Detective McNally and the other detectives told you that they had questioned Malinski and Malinski said that he did not have anything to do with the Fox murder? Isn't that what they said? A. (No answer.)

Q. Is that what they said? A. They said it 1154
will only take a couple of hours before he will get smart.

Q. What? A. It will only take a couple of hours before he will get smart.

Q. The cops said it will only take a couple of hours? A. While riding down from the Jail.

Q. I asked you a question; didn't the cops tell you, and the police officers that were there that day at the Hotel Bossert, didn't they say to you they were questioning Malinski at length and he said he had nothing to do with the Fox murder? Didn't they say that to you? A. No, 1155
they did not. They didn't say that.

Q. Did they say words to that effect? A. All they said, they asked him a few questions.

Q. And he said he knows nothing about it? A. The questions they asked him about the money.

By the Court:

Q. Yes? A. And he said all the change that was taken from the Patrolman Fox holdup he said I—the only thing he knows I gave him all the change.

1156 By Mr. Solovei:

Q. You gave him? A. Yes; so they wanted him to say it in front of me.

Q. In other words, he said you were the person that gave him the change, is that right? A. Yes, that is what he said.

Q. They asked him whether or not he assisted in the Fox murder, didn't they, before that? A. I don't believe they did.

1157 Q. You don't believe they did? A. No.

The Court: That is all hearsay, isn't it? How does he know what they asked him; things that they asked him about not in his presence. If you want the hearsay, I will let you ask him.

Mr. Solovei: I am asking him if the detectives did not tell him that.

The Court: Put the question clearly.

By Mr. Solovei:

1158 Q. Didn't the detectives tell you when you arrived at the Hotel Bossert, that they spoke to Malinski and they asked Malinski whether he knew something about the Fox murder, and Malinski said he knew nothing about it? Didn't they tell you he said that? A. No.

Q. What time was it that you got to the Hotel Bossert? A. I would say about 1:30.

Q. And how was Malinski dressed when you got there? A. He was sitting there in his shorts.

Q. He was in his underwear, wasn't he? A. He had a blanket over him.

Q. What? A. He had a blanket wrapped around him.

Q. He had a blanket around him? A. Yes.

Q. Malinski told you that they were giving him a workout, didn't he? A. He never said that.

Q. You know what a workout means? A. Sure I do.

Q. Tell the jury what a workout means. A. A workout means to me when they give you a beating. They beat you. 1160

Q. When you saw Malinski there, he just had his undershirt on and his BVD pants, is that right? A. Yes.

Q. His coat was off; his shirt was off and his pants were off? A. Yes, sir.

Q. And that was at one o'clock in the afternoon? A. Yes.

Q. Is that right? A. That is right.

Q. And then didn't one of the detectives, I don't care which one, didn't one of the detectives say to Malinski in your presence, "Now let us see how long you are going to keep this up. I will put you in one room with Spielfogel, 1161 and what you done to Spielfogel's wife, he will knock your brains out"; didn't they say that to him? A. They never said no such thing.

Q. Well, was Assistant District Attorney Heffernan there? A. I don't think so. I don't think he was there.

Q. Did he get there about three o'clock; two or three o'clock? A. I think he come up there after he was dressed; after he had his clothes on. I am not sure.

Q. After who was dressed? A. Malinski.

Q. Who told Malinski to get dressed? A.

1162 From what I understand, they wanted to see if he had any bullet holes.

The Court: Not from what you understand; tell us what you know.

By Mr. Solovei:

Q. Who told Malinski to get dressed when you were there?

1163 The Court: If you know.

The Witness: The detective.

By Mr. Solovei:

Q. What? A. The Lieutenant.

Q. Did he get dressed? A. He did.

Q. Was he dressed when Assistant District Attorney Heffernan came there? A. Yes, sir.

Q. What? A. Yes, he was dressed.

Q. And were you there when you heard the Assistant District Attorney question Malinski?

1164 A. I don't know if he was an Assistant District Attorney that was questioning him. I think it was McNally.

Q. McNally? A. Yes.

Q. Well, wasn't the Assistant District Attorney present when McNally was questioning him? A. I don't know. I don't remember whether he was or not.

Q. Well, did you remain in the room all the time where Malinski was? A. Yes.

Q. And did you hear them questioning him while you were in the room? A. Yes.

Q. And the questions came from McNally or some other cop, continuously, is that correct? A. I think it was from—you mean when he told all that happened?

Q. I mean at three o'clock in the afternoon, two or three o'clock in the afternoon, while you were there. A. The only one I believe he talked to was McNally.

Q. And did you hear Malinski say to McNally at two or three o'clock in the afternoon that he did not commit the crime or know anything 1166
about the Fox murder?

Mr. McGough: That is objected to. That has been asked three times. Twice it has been answered in the negative.

The Court: Let him ask it again. Did Malinski say anything of that kind in your presence?

The Witness: Did he make a statement?

The Court: That he did not know anything about the Fox case.

The Witness: I didn't hear him say 1167
that.

By Mr. Solovei:

Q. They questioned Malinski from the time you came there, in any event, up to at least 10 o'clock that night, before Malinski said that he knew something about the Fox murder, isn't that correct? A. He told them about five o'clock everything.

Q. Five o'clock? A. That night; in the afternoon.

Q. Or was it later than that? A. It could not have been later. It was right before supper time.

Q. So from the time you came there until about half past five that evening he still maintained his innocence, is that correct? A. That is right.

By the Court:

Q. He said he did not know anything about the Fox murder; that he was not involved in it? Is that what you mean to say? A. He said he was not there.

Q. Had nothing to do with it? A. Yes.

Q. Is that right? A. That is right.

By Mr. Solovei:

Q. Now there came a time while you were at the Hotel Bossert with Malinski, where the two of you were placed in a private room, wasn't there? A. Yes, not a private room. He asked, Malinski, if he could speak to me.

Q. A separate room, wasn't it? A. It was not a room. It was a closet.

Q. Was it a toilet, a wash room? A. One of them big closets.

Q. Just an ordinary clothes closet? A. Yes, that is right.

Q. And you and he had a private talk, didn't you? A. About two minutes.

Q. And he said to you, "Slip, what are they trying to do, frame me here", and you said, "Moish, don't worry. If you didn't commit the crime, you have nothing to worry about". Isn't

that part of the conversation that took place there? A. Do you mean what took place?

The Court: No, tell us what took place there.

Q. I am asking you whether or not—

The Court: Did what Mr. Solovei asked you about take place there in the closet?

Mr. McGough: Yes or no. 1172

The Court: Is it the way Mr. Solovei put it?

The Witness: He said, what took place in the closet?

Mr. McGough: Repeat the question. Listen carefully.

The Court: Repeat the question to him.

(The question was repeated by the stenographer as follows: "Q. And he said to you, 'Slip, what are they trying to do, frame me here', and you said, 'Moish, 1173 don't worry. If you didn't commit the crime, you have nothing to worry about.' Isn't that part of the conversation that took place there?")

The Witness: No.

The Court: What was said there in the closet?

The Witness: He said, "Slip, I know they got Jake in another room and he is telling them everything he knows so I might as well put the finishing touch to it

and get it over with. They know too much."

By Mr. Solovei:

Q. Is that the whole conversation you give us now, all of that that was said? A. No.

Mr. Carabba: I ask that that be stricken out as to the defendant Rudish.

The Court: Yes, the jury will disregard it as to the defendant Rudish. Have you anything more, Mr. Solovei?

Mr. Solovei: Yes, I have a few more questions.

The Court: I am not going to limit you to any extent. Counsel will not be limited in his cross-examination.

Mr. Solovei: May I ask your Honor, that if you are going to stop now, to see that this witness is held incommunicado during further examination. It is no more than fair.

The Court: The Court directs that the witness is not to be interviewed by anybody connected with this case.

Mr. McGough: He has got to go back with the same two policemen.

The Court: Not to be interviewed by anyone, and I mean by anyone. That means no one. The Police Officers are directed and instructed by order of the Court not to talk to this witness about this case or any of its aspects under any

circumstances. A violation of that order would be held to be contempt of court.

Mr. McGough: That does not mean that I have to send him up to 161st Street alone?

The Court: That does not. The Officers can talk to him when they go back. He can talk to the Officers and he can talk to anybody at all.

Mr. McGough: Not about the case.

The Court: But not about this case 1178
while he is under cross-examination.

Gentlemen of the jury, it is now six o'clock and we are about to take a recess until tomorrow morning at ten o'clock. Again I am required by the law to admonish you not to discuss the case among yourselves or with any other person; not to permit anyone to speak to you about this case or refer to it in your presence. Again I admonish you to keep your minds open and do not form or express any opinion or conclusion as to the guilt 1179
or innocence of the defendants on trial, or either of them or any of them, until the case is finally submitted to you for your consideration after a charge on the law by the Court. You may retire, gentlemen.

(The jury retires from the courtroom.)

The Court: The defendants are remanded.

(Recess until 10 a. m., June 17, 1943.)

Brooklyn, N. Y., June 17, 1943, 10 a. m.

AFTER RECESS. TRIAL RESUMED.

NATHAN SPIELFOGEL, recalled for cross-examination, having been previously duly sworn, testified as follows:

*Cross-examination by Mr. Solovei:*

Q. Now, Slip, you made about 60 visits to the District Attorney's office in Brooklyn, is that correct? A. I did.

Mr. Solovei: At this time, I offer in evidence the record produced here pursuant to subpoena duces tecum, from the Department of Corrections, of one Nathan Spielfogel, who was incarcerated at the 161st Street prison.

The Court: Mark it for identification.

(Marked Defendant's Exhibit B for identification.)

Mr. Solovei: May I have an exception to your Honor's refusing—

The Court: Is there any objection to this document?

Mr. McGough: Yes; it is immaterial. I object to it.

The Court: Sustained.

Mr. Solovei: Exception.

The Court: Do you claim there is anything in the document that contradicts

what he said? Just answer that question yes or no.

Mr. Solovei: It is not for that purpose.

The Court: I am asking you, is that the reason?

Mr. Solovei: I cannot answer—

The Court: Is that the reason why you are offering it, to show contradictions on the part of the witness? Just answer that, yes or no. 1184

Mr. Solovei: Cannot answer it because I am not using it for that purpose.

The Court: All right; objection sustained.

Mr. Solovei: Exception.

The Court: If you desire to offer the document to show a contradiction on the part of the witness, want to contradict him, impeach his credibility; that is another matter.

Mr. Solovei: I am using it to attack his credibility; yes. 1185

The Court: That is not what you said.

Mr. Solovei: You asked me about contradictions.

The Court: That is attacking credibility; contradictions bear on credibility. But if you merely want to clutter up the record with a lot of papers, I am going to sustain the objection.

Mr. Solovei: I respectfully except to your Honor's statement, and I except to your Honor's refusing to permit me to offer it in evidence. I will tell your Honor

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at the bench, if you want me to, why I want to offer this in evidence.

The Court: Sustained. It is marked for identification, so that the record is protected.

By Mr. Solovei:

Q. I think you told us, you gave us two names yesterday, Curt Lawrence and Kovner. Are
1187 those the names that you want to stick to that you spoke to at Sing Sing? A. I did not have a deep conversation with Kovner about the case.

Q. Did not have a deep conversation? A. No.

Q. Did you have a deep conversation with Curt Lawrence? A. Not very.

Q. Do you want to stand by those two names as the two persons you spoke to at Sing Sing? A. That is right.

Q. What? A. That is right.

Q. Is the name Curt Lawrence? A. That is right.

Q. Or is it Sam Kablonski? A. It was not
1188 Kablonski.

Q. Do you know Kablonski? A. I do not.

Q. He was up in Sing Sing while you were up there? A. He was up in Sing Sing, but I don't know him to speak to.

Q. You know Sam Kovner very well? A. I know Sam Kovner.

Q. How long have you known Sam Kovner? A. I will say about eight years, I guess.

Q. How long have you known Curt Lawrence? A. About a year and a half now.

Q. You mean since you are up there? A. About.

Q. And before you came up there, did you know him? A. Before I came up, no.

Q. You knew Kovner before you came up there but you did not know Lawrence? A. I knew Kovner but not to talk to.

Q. You know—what is his name—Kovner—and Sam Kablonski, were very friendly with Beitler, don't you? A. I know that now.

Q. Didn't you know it then? A. What do you 1190
mean? When I went to Sing Sing?

Q. No; before that; before Sing Sing? A. No; I did not know that.

Q. As a matter of fact, Sam Kovner and Sam Kablonski were in the same hotel that Beitler was at the time he shot and killed himself; is that right? A. That is right.

Q. And at the time that happened you were in the Tombs Prison, isn't that correct, awaiting sentence? A. That is correct.

Q. Did they visit you while you were in the Tombs Prison, Kovner or Kablonski? A. No, 1191
sir.

Q. When somebody spoke to you asking you whether or not you wanted to go on this job, you said, I think, on your direct examination—if I am wrong correct me—that you went with Malinski to hide the guns; is that right? A. No—say that again, please.

Q. Do you want me to repeat it? A. Please.

Mr. Solovei: Will the stenographer read it, please.

(Read)

A. Not for that particular job.

1192

The Court: I don't understand what that means. Do you care to pursue it any further, Mr. Solovei?

Mr. Solovei: I am going to ask another question, Judge.

The Court: All right.

By Mr. Solovei:

Q. Did the police tell you at any time that you could be brought in as an accomplice in this case, Slip? A. I don't remember them saying that.

1193

Q. Don't remember them saying that? A. No.

Q. Was there some talk about it by some of the police officers at any time during the conversation with you that they may bring you in as an accomplice in this case? Do you remember that? A. I don't remember.

By the Court:

Q. No; was that said? A. I never heard it said.

1194

By Mr. Solovei:

Q. Well, was it said by any assistant district attorney to you? A. Not that I can remember.

Q. And you said after they came back and you saw guns, after they came back, the same guns you say were used for the purposes of committing this crime?

Mr. McGough: I object to that unless he specifies "Came back from where".

1195

Q. On the morning of February 16th, or, we will call it the night of February 15th, 1941—

By the Court:

Q. Did you actually see the guns? A. That were used?

Q. Listen to the question. Mr. Solovei asked if you actually saw the guns that were used on the Fox killing, after the killing? A. After the killing, no.

1196

By Mr. Solovei:

Q. Did you see Beitler? A. After the killing?

Q. Yes. A. No; not that night.

Q. You saw Beitler a number of times after February 15th, 1941, isn't that right? A. Yes; but I did not see him that night.

Q. You saw him a number of times after February 15th, 1941, isn't that correct? A. Yes; a few times.

Q. You and Beitler were very friendly, isn't that right? A. Very friendly, yes.

1197

Q. You had gone out on jobs with Beitler before, stickup jobs? A. Never.

Q. Did you visit Beitler at the 51st Street Hotel when he lived up there? A. Never.

Q. Did you visit him at his home? A. No; I did not.

Q. Where did you meet Beitler the times when you did meet him? A. Where did I meet him? I met him on Houston, between Avenue A, and I don't know the other block. I think it is Norfolk or Suffolk—a candy store.

1198 Q. Is that a hangout for you? A. It is his aunt's candy store.

Q. Did you hang out there often? A. I just came over there and talked a few times.

The Court: In line with the question that you asked, I want to be clear as to what the witness claims.

By the Court:

1199 Q. Yesterday and this morning you spoke about hiding guns? A. That is right.

Q. This morning you told Mr. Solovei that the hiding of these guns had nothing to do with this Fox matter? A. At that time when I put them away?

Q. When you put them away it had nothing to do with this matter? A. At that time? I did not know.

Q. Was it for some other matter?

Mr. Solovei: I object.

1200 Q. Just yes or no.

Mr. Solovei: I object to the question.
The Court: Do you?
Mr. Solovei: Yes.
The Court: Objection overruled.

By the Court:

Q. Was that in connection with some other matter? A. That is right.

Mr. Solovei: In view of your Honor's question and the answer, I move for the withdrawal of a juror and the declaration of a mistrial.

The Court: The question was prompted by counsel. The motion is denied.

Mr. Solovei: Exception.

By Mr. Solovei:

Q. When you left the courtroom here yesterday you walked along Boerum Street, you and Yellin; is that right? A. I don't know what street it is. 1202

Q. Right outside here, from here to whereever you went? A. Outside, yes.

Q. Where did you go from here? A. From here? I think we went to a restaurant.

Q. To have something to eat? A. Yes.

Q. And were either you or Yellin handcuffed to anybody? A. Handcuffed?

Q. Yes. A. Nobody.

Q. Walking through the streets with the detectives without being handcuffed; is that right? A That is right. 1203

Q. Where did you go from the restaurant? A. From the restaurant we went for the car to go back to the jail.

Q. Went back to 161st Street jail? A. Yes.

Q. Neither you nor Yellin was handcuffed then? A. No.

Q. Isn't it a fact that you were told by somebody that you were going to get some consideration, that you do not have to worry; that everything will be all right, as far as you are con-

cerned; that your sentence will be lessened somewhat; isn't that so? A. No, sir.

Q. During these 60 visits that you made, or about that many, at the District Attorney's office, did you ever meet your wife at the District Attorney's office? A. Yes.

Q. Did you ever meet other members of your family at the District Attorney's office? A. No, sir.

Q. Was your child at the District Attorney's
1205 office with your wife? A. No, sir.

Q. While you were at the District Attorney's office with your wife, were you sitting around in some room there with your wife? A. Yes; in front of four detectives.

Q. You were sitting in a room? A. In the detectives room.

Q. You were sitting in a room? A. That is right.

Q. You were there talking to your wife? A. That is right.

Q. You spent hours and hours with her at
1206 times, didn't you? A. Maybe a couple of hours.

Q. Did this thing happen every visit that you made to Brooklyn, to the District Attorney's office? A. No, sir.

Q. While you were at the District Attorney's office, did you meet Yellin there? A. I did.

Q. You and Yellin were in one room? A. Yes, sir.

Q. And while you and Yellin were in the room neither one of you were handcuffed? A. We were not handcuffed.

Q. Did you see Yellin's family there too, at the District Attorney's office? A. I did not.

Q. Never any member of his family? A. I think I seen his wife once up there. I am not sure.

Q. Was he married at that time? A. I don't believe he is.

Q. Why do you say you saw his wife, if you know he is not married? A. That is what I call her.

Q. You call her his wife? A. Yes.

Q. Did he live with this woman in New York as husband and wife? 1208

Mr. McGough: Objection.

The Court: Sustained.

Mr. Solovei: Exception.

By Mr. Solovei:

Q. How many times did you see this lady that you call his wife, at the District Attorney's office, with Yellin, while he was down talking to the District Attorney? A. There was only once that I could remember.

Q. See his mother there? A. Never. 1209

Q. Sister? A. Never.

Q. Did you see his sister there? A. No.

Q. Were any of the members of your family there other than your wife? A. No, sir.

Q. You and Yellin occupy the same cell at 161st Street jail? A. Now?

Q. Yes. A. No, sir.

Q. You see each other every day? A. Yes, sir.

Q. How long do you know this man Tiplet—did you call him Tiplet—Red—what is his right name? Will you give me that? A. Red Tiplet.

Q. Tiplet, is that the way you pronounce it? A. Red Tiplet.

Q. How long do you know him? A. About five years.

Q. Did you meet him on the East Side? A. I did.

Q. Did you ever go out with him? A. Never.

Q. When you met him on the East Side, did you meet him in this candy store that you are talking about? A. I met him in the candy store
1211 and I met him at the club. He was a member of the club.

Q. Member of your club? A. Not my club; the Citadel Club.

Q. Are you a member of the Citadel Club? A. I am not.

Q. Is the Citadel Club a hang-out for thieves and murderers? A. It is not a hang-out; there is a lot of legitimate people enter it too.

Q. Would you call yourself legitimate? A. No, sir.

Q. Call Yellin legitimate? A. No, sir.

Q. Call Tiplet legitimate? A. Yes, sir.

1212 Q. How often did you see Tiplet at the club? A. A number of times.

Q. Did you, at some time that you saw him, did you eat with him? A. Eat with him? No, I never ate with him.

Q. Did you go out and have some drinks with him? A. No.

Q. Did you visit him at his home? A. At his home? No.

Q. Do you know where he lived at that time? A. I did not.

Q. Did he live on the East Side? A. I know

he lived on the East Side, but I don't know where.

Q. Did you know what business he was in at the time you knew him from the East Side? A. I don't believe he was working at the time.

Q. Used to see him very often then, didn't you—you were not working, were you?

The Court: There are two questions there.

Mr. Solovei: All right. I will withdraw it. I will withdraw those questions, Judge. 1214

Q. Did you see Beitler at the Citadel Club? A. I did.

Q. How often did you see Beitler at the Citadel Club? A. He came up there a couple of times.

Q. Beitler legitimate? A. No, sir.

By the Court:

Q. Beitler was a gun man, wasn't he? A. That is right. 1215

Q. The same as you? A. That is right.

By Mr. Solovei:

Q. Now, did you go there specially to meet Red Tippler at the Citadel Club at times? A. Specially?

Q. Yes. A. No, sir.

Q. Did you see this Red Tippler at any other club that you visited? A. No.

Q. Slip, on the day that you say you were

1216 present when Malinski made some statement at the Hotel Bossert, can you tell us what time of the morning you left?

The Court: We have been over that half a dozen times.

Mr. Solovei: I don't think I asked him that question.

The Court: Proceed to some other question. There must be a limit to this.

1217 Mr. Solovei: I did not ask him that question. I am sure of it.

The Court: You did. Ask the question for the final time again.

By Mr. Solove.:

Q. What time did you leave the Hotel Bossert? A. I don't remember.

Q. Was it in the early hours of the morning? A. I don't remember.

Q. And do you remember that while Malinski was being asked some questions and he did not

1218 remember some answers, that you volunteered some of the answers? You remember that?

The Court: Now the question is bad as to form.

Mr. Solovei: All right; I will reframe it.

The Court: I asked you yesterday not to put questions of that kind.

Mr. Solovei: I don't do it intentionally.

The Court: I know you do not.

By Mr. Solovei:

Q. Isn't it a fact that you volunteered answers to certain questions that were propounded to Malinski? A. No.

Q. Who is Nat Math? A. I think he is a District Attorney; I am not sure.

Q. Did you ever meet him? A. I don't believe I did.

Q. Would you know him if you saw him? A. Maybe if I seen him, I don't know; if I seen 1220
him I probably would know him, if I know him or not.

Q. Didn't you at some time or another say to Malinski, "You rat you, I will get even on you for what you have been doing with my wife"; didn't you say that? A. No, sir.

Q. Do you like Malinski? A. One time I did.

Q. You don't like him now, do you? Yes or no. A. No.

How long have you known Levine? A. Levine; since about 1938.

Q. Friend of yours? A. Which Levine do you 1221
mean?

Q. How many Levines do you know? A. I know a couple of them.

Q. Which Levine did you think I am talking about?

Mr. McGough: Objection.

The Court: Come on now, let us get down to it. Tell him what Levine you have in mind. Let us carry this case along with some degree of progress. Proceed, please.

1222 By Mr. Solovei:

Q. You spoke about a Levine here yesterday, didn't you? A. Yes.

Q. What is that Levine's first name? A. Harry Levine.

Q. Harry Levine? A. Harry Levine.

Q. Do you know where he lived at that time before you went away? A. I don't know where he lived, but I know it is out in Brooklyn.

1223 Q. Did you ever visit him? A. Yes.

Q. At his home? A. No.

Q. Did he ever come to your house? A. No, sir.

Q. Did you go out with him? A. No, sir.

Q. Was he in your company often? A. Often? No.

Mr. Solovei: I think that is all as far as I am concerned.

*Cross-examination by Mr. Carabba:*

1224 Q. Mr. Spielfogel, is it? A. Spielfogel.

Q. Do you remember the first time that you mentioned Mr. Rudish's name in this case? A. First time? Yes.

Q. When was that? A. In this case?

Q. I am talking about this case, yes, sir. A. The first time was a Friday.

Q. Friday when? A. Before the holdup.

Q. Before the case opened? A. What do you mean, the first time I ever spoke to him?

Q. No, no. When did you for the first time mention the name of the defendant Rudish in

the Fox case and to whom? A. First time was to Mr. McGough.

Q. I said, when. Can you give us the month, the year?

By the Court:

Q. Do you understand what the question is? A. I don't know what he means.

Q. Here is what Mr. Carabba means: You made some statement about Rudish being involved in the case, is that it? A. Yes. 1226

The Court: Is that what you had in mind?

Mr. Carabba: That is right, Judge Leibowitz.

By the Court:

Q. After the killing of Fox you told somebody that Rudish was mixed up in this case, is that right? A. Somebody in the office?

Q. No, indeed. Mr. Carabba is not limiting you to District Attorneys or policemen. To anybody. What he wants to know, if I understand Mr. Carabba's question— 1227

Mr. Carabba: That is right.

The Court: You will pardon me for explaining it in plain English.

Q. What the lawyer wants to know is this: When was the first time that you ever mentioned Rudish's being connected with the Fox case, after it happened? A. First time—

Q. And to whom, whether it was to a prisoner or to a policeman? A. To a prisoner.

Q. Or to a District Attorney only; and to whom did you mention it for the first time? A. To a prisoner.

Q. Mr. Carabba wants to know when that was? A. I don't remember the date.

Q. When? A. I know it was in Sing Sing but I don't know when.

1229 By Mr. Carabba:

Q. Who is the prisoner? A. Kurt Lawrence.

Q. He was the first person to whom you spoke about Rudish, is that correct? Are you sure about that? A. Yes.

Q. You remember when you were brought down here and you were asked to testify before the Grand Jury? A. I never went in front of the Grand Jury.

Q. I see you did not go before the Grand Jury? A. That is right.

Q. Didn't you at that time say that Rudish
1230 had never anything to do with the Fox case? A. I did not.

Q. Didn't you tell some of the police officers that Rudish had nothing to do with the Fox case at that time? A. No, sir.

Q. Weren't you told by the police officers that unless you brought Rudish in the picture you could not go before the Grand Jury? A. What was that, sir?

(Question read.)

A. I did not say that.

Q. You were present when Rudish was arrested at the police station at Bath Beach? A. That is right.

Q. Did you at that time, while you were in the police station and Rudish was there, did you at that time say to the police that Rudish was involved? A. They already knew it.

Q. What? A. They knew it.

Q. I didn't ask you that. Did you say at that time to the police, in the presence of Rudish that Rudish was involved in the Fox case? A. 1232
In the presence of Rudish? No.

Q. Didn't you say then and there at that station house—I am talking about the Bath Beach incident—that Rudish was not involved in the Fox case? A. I did not.

Q. You never mentioned his name, did you, to the police at that time? Yes or no. A. That time?

Q. What? A. I did not say anything that time.

Q. You know you did not say anything about Rudish at that time in the station house? A. 1233
That is right.

Q. And you were asked, were you not, by the police whether or not Rudish was in the Fox case? A. I was asked; sure I was asked.

Q. Didn't you say that Rudish was not involved in the Fox case, at the station house at Bath Beach? A. I said he was there—not at that time —before that.

Q. I am not talking about any conversation you had with a prisoner by the name of Kurt Lawrence. I am talking now of the incident at the Bath Beach station house when you were

confronted with Rudish. You remember that incident? A. That is right.

Q. Didn't the detective there ask you in the presence of Rudish whether or not Rudish had anything to do with the Fox case, and you said, "No"? A. I never was brought in front of him in the station house.

Q. You were there when he was being questioned, isn't that correct? A. In a different room.

The Court: Same room you mean?
Mr. Carabba: Same room.

A. I was not.

Q. Wasn't there a time that you were brought in the same room where Rudish was, by the detectives? A. Not in the station house.

Q. Was it at the Hotel Bossert? A. They just brought me in front of him, that is all.

Q. Was it at the Hotel Bossert; yes or no? A. What was the question.

Q. That you were brought in front of Mr. Rudish? A. I was.

Q. And was it on that occasion that you told the police, the detectives, that Rudish did not have anything to do with the Fox case at that time? A. What I did say I don't know—

Q. Please answer the question. At that time didn't you say that Rudish had nothing to do with the Fox case, at the Hotel Bossert at that time? A. I did not.

Q. What did you say at that time?

Mr. McGough: I object to that.

Mr. Carabba: In the presence of Rudish.

Mr. McGough: Objection.

The Court: Objection overruled.

Mr. McGough: May we have the time fixed if possible?

The Court: He fixes it as the Hotel Bossert.

Mr. McGough: He was down there a lot. I would like to have the date fixed or I am going to object to it. 1238

Mr. Carabba: All right; fix the date. I have no objection.

Mr. McGough: I object to the question unless the date that he wants the conversation this particular witness had, is fixed, if they are able to fix it.

Q. Shortly after Mr. Rudish was arrested, October 24, 1942—

By the Court:

Q. Do you understand? Mr. Carabba wants to know what you said in the presence of Rudish? A. I was brought in and taken out again, that is all That is all I remember. 1239

By Mr. Carabba:

Q. Weren't there questions? A. Not that I can remember.

Q. Put to Rudish in your presence? A. Yes, yes.

Q. And you heard Rudish say in your presence—

1240 Mr. McGough: Objection.

The Court: Is there any objection to what Rudish said?

Mr. McGough: I misunderstood, Judge. I thought he was talking again about what if anything this man said.

The Court: Mr. Carabba is now asking for what Rudish said.

Mr. McGough: I certainly object to anything Rudish said. It is self-serving.

1241 The Court: That is sustained.

By Mr. Carabba:

Q. Well, you remember being asked by the detectives in the presence of the defendant Rudish: "Do you know anything about this man?" referring to Rudish? A. They did not say that.

Q. What did they say? Tell the jury. A. They just brought me in front of him and asked me if I knew this fellow. I says I did. They asked him the same thing. That is all I can remember. After that they took me right out.

1242 After that they took me right out.

Q. Didn't they ask you at that time and place whether Rudish had anything to do with the Fox case—speaking about the Hotel Bossert, October 24th, 1942? A. I don't remember.

Q. Do you remember a detective saying to you in the presence of the defendant Rudish, "Well, you still want to do your thirty to sixty?" A. They never told me.

Q. Nobody told you that? Who was the detective that brought you into the room where Ru-

dish was on that occasion? A. I believe it was Lieutenant McNally.

Q. When did you for the first time talk to Beitler about this job at Coney Island? A. About three days before, three or four days before the Fox case.

Q. Three or four days before February 15, 1941, is that correct? A. About that. I don't know it to be correct. It is about that time.

Q. You know the shooting of Fox took place on February 14, 1941? A. 15th. 1244

Q. February 15th. I stand corrected. And you fix the time three or four days prior to February 15, 1941; is that correct? A. About that.

Q. Were you present when Yellin introduced, as you say, Rudish to Malinski? A. I was.

Q. And when was that? What time do you fix that that took place? A. That was around my birthday, in August.

Q. Around your birthday? A. In August of 1940.

Q. 1940? A. Yes.

Q. The witness Yellin said it was in the month of October. Would that refresh your recollection? A. No. 1245

Q. Well, you knew then, did you not, that there was a job, as you call it, a robbery at Coney Island, to take place; you knew that, didn't you? A. Then?

Q. Yes. A. No.

Q. When did you know it for the first time? A. For the first time when Yellin told me.

Q. When Yellin told you, and what time do you fix when Yellin told you that? A. About

1246 three or four days before it happened. About three days before it happened.

Q. You were asked by Yellin whether you wanted to go on this robbery? A. He explained it all to me what took place.

Q. You were asked by Yellin whether or not you wanted to go on this stickup at Coney Island? Yes or no. A. No.

Q. You say Yellin explained to you the stick-up that they were going to pull off at Coney
1247 Island? A. No.

Q. What did you mean? A. What I meant, he told me what happened—what Ebbie told him, Ebbie and Tiger—he delivered the message to me.

Q. Well, Yellin told you what? A. That he met Tiger and Ebbie when he was coming home from work, and they got a soft thing out in Coney Island, and he wants to see me. That is what he told me.

Q. After he saw you what were you supposed to do? A. I was supposed to go and see
1248 Beitler that same day.

Q. You did go to see Beitler? A. I did not.

Q. He called you up, did he not? A. The following day.

Q. And you did see him, didn't you, pursuant to that telephone message? A. I did.

Q. And you knew that Beitler was a gunman, like yourself? A. I did.

Q. Beitler and you talked over this soft thing at Coney Island? A. That is right.

Q. And Beitler asked you if you wanted to go on the job? A. That is correct.

Q. That is correct. And in that conversation

Beitler asked you whether you would furnish him with the "pieces," is that correct? A. That is correct.

Q. And by the "pieces" in answer to Judge Leibowitz's question yesterday, I understood you to say by "pieces" you meant guns, is that correct? A. Yes, sir.

Q. The underworld slang for guns is "pieces", is that correct? A. That is correct.

Q. So that on that occasion, two or three days before February 15th, 1941, Beitler asked 1250
you for the guns, is that correct? A. That is right.

Q. For this Coney Island job, this soft job down in Coney Island? A. Yes,

Q. And your reply to Beitler was that you did not have the "pieces"; is that correct? A. That is correct.

Q. But you knew who had the "pieces", the guns; didn't you? A. That is right.

Q. And you told Beitler where he, Beitler, could get the guns, didn't you, in that conversation? A. He asked me, "Where is Moish now." 1251

Q. He asked you what? A. "Where is Moish?" Meaning Malinski. I told him, "The only place he must be is over at the store where he works." So he said, he is going to go down and see him. That is all.

Q. Then you knew that certain guns were at a store? A. That is right.

Q. And you imparted that information to Beitler, is that correct? A. No; he was under the opinion that they were mine at first, but I made it clear to him. I told him "they ain't mine; they are Malinski's."

Q. You have had certain guns of your own, didn't you, certain "pieces" of your own, you used on jobs? A. I did.

Q. When was it that you had this conversation with Beitler concerning the guns, when you told him they were at the store? Was that on the same day? A. The day that he came down to the candy store first time that he came down.

Q. What day would you fix that was? A. I would say it was around Thursday.

1253 Q. Thursday? A. Yes.

Q. Then you know that there were certain guns at the store? A. I did.

Q. How many guns did you know or "pieces", as you call them were there. A. At the store?

Q. Yes. A. Seven.

Q. How many belonged to you? A. None.

Q. How many belonged to Beitler? A. None.

Q. Whom did all these guns belong to, if you know? A. Mr. Malinski.

Q. All of them? A. Correct.

1254 Mr. Solovei: Of course, as far as I am concerned, on behalf of the defendant Malinski, I must object to it, and move to strike out all the testimony relative to the separate and distinct conversations.

The Court: Sustained.

Mr. Solovei: I do not know how we are going to eradicate this testimony unless you take care of it later.

The Court: I will take care of it in proper shape, and if I don't, why, you call it to my attention, and I am quite sure that I will satisfy all of you. In other

words, the English that will be used will be forthright and clear and understandable so that this jury will not take this case, if it reaches that far, under any misapprehension. The rights of these defendants will be amply protected.

Mr. Carabba: May I proceed, Judge Leibowitz?

The Court: Surely, Mr. Carabba.

1256

By Mr. Carabba:

Q. Now, Mr. Spielfogel, where was this conversation you had with Beitler with reference to the guns? Was it at the candy store? A. Yes.

The Court: Now, Mr. Carabba, it is important for me at this time to understand exactly what the witness claims so that I may be in a position properly to charge on certain phases of the law. You undoubtedly know what I have in mind.

Mr. Carabba: Yes, your Honor. 1257

The Court: I would like to have the testimony clear on this point.

Mr. Carabba: No objection.

The Court: May I?

Mr. Carabba: No objection.

The Court: I do not want to intrude on counsel's province.

Mr. Carabba: None at all.

By the Court:

Q. You say that Beitler asked you for the "pieces"? A. That is right.

Q. You did have "pieces" at that time, didn't you? A. That is right.

Q. You say that you refused to give him your "pieces"? A. That is right.

Q. Now, listen to this carefully that I am about to put to you. Take your time in answering it. When you said, "I will not give you the 'pieces' or "I won't give you my 'pieces'" or words to that effect, who was the next person that spoke, you or Beitler? A. You see, I did not—

1259 Q. No, no; just pause for a minute. If you want to think about it, I will let you do that. Who was the next person that spoke after you said to Beitler, "I am not going to give you my 'pieces'" or "you cannot use my 'pieces'" or words to that effect? Did you speak or did Beitler speak? Did you say something or did Beitler say something then? A. Beitler did.

Q. What was it Beitler said? A. He said, "Where is Moish?"

Q. Yes. A. I said, "The only place I know he might be over at the store where he works." He said, "I am going to go down to see him."

1260 Q. Yes. A. Then he left—

Q. Is that all that was said at that time? A. That is all.

Q. Did you send him to Moish? Did you tell him to go to see Moish to get "pieces" of Moish, or did Beitler say, "Where is Moish?" A. Beitler said, "Where is Moish?"

The Court: Go ahead.

By Mr. Carabba:

Q. Didn't you say a moment ago that you told

Beitler that he could get the "pieces" at Moish's store? Didn't you say that? A. I don't remember saying that.

Q. You knew that there were guns at Moish's store, isn't that correct? Is that your story? A. That is right.

Q. Didn't you on that occasion, when Beitler spoke to you and asked you for your "pieces", you said you would not let him have yours; is that correct? A. He did not ask me for mine.

Q. He asked you for "pieces", for guns? A. 1262
Guns, yes.

Q. And you told him where he could get them, down in the store, didn't you, on that occasion? A. I did not say that he could get them out of the store.

Q. You knew they were at the store? A. That is right.

Q. You told Beitler that guns were at the store at that time? A. I did not.

Q. Didn't you tell Beitler to get in touch with Moish, or at the store he could get the "pieces"? A. I did not.

Q. What did you say? A. I says he will have 1263
to talk to Moish, that is the only way he can get them "pieces". "There is no part of mine there," I said. He was under the opinion that they were mine, that I was part owner of them.

Q. That you would have to talk to Moish to get the "pieces", to give the "pieces" to Beitler? A. He will have to talk—Beitler—if he gets them all right. I have got no part of the "pieces".

Q. Didn't you say you would have to talk to

1264 Moish so that Moish would give Beitler the guns; is that correct? A. Yes.

Q. Did you talk to Moish—

The Court: Well, now—I want to be absolutely fair.

Mr. Carabba: I understand the point, Judge.

The Court: I have to charge this jury.

1265 Mr. Carabba: I understand, Judge.

The Court: You know the point that is involved?

Mr. Carabba: No objections, your Honor.

The Court: I am not going to lead this witness, at all.

Mr. Carabba: I know your Honor won't.

By the Court:

1266 Q. Now, go back again, and be very careful about what you answer. By that I mean, I want you to understand the question. I want you to understand what you are saying. There came a time when Beitler came to you and asked you for guns; is that right? A. That is right.

Q. Now, from that point on, I am going to ask you to repeat the conversation step by step without my leading you. When Beitler asked you for the guns, or for guns, what was it you said to Beitler?

The Court: Do you gentlemen object to what the Court is doing?

Mr. Geoghan: On behalf of Indovino, I do not.

The Court: I want you to feel free to object.

Mr. Solovei: My objection, you have on record, on this line of testimony.

The Court: You mean in so far as it may bind Malinski?

Mr. Solovei: Yes.

The Court: I hold it does not bind Malinski in the slightest degree. The 1268
jury is instructed to disregard the testimony as far as it may refer to Malinski. Is that instruction satisfactory?

Mr. Solovei: The only difficulty is, of course, the jury is getting this damaging testimony as far as Malinski is concerned.

The Court: That is sometimes true in cases where several defendants are being tried together; but the Court's instruction is clear on that point. I will make it again and again.

By the Court: 1269

Q. Now, when Beitler asked you for "pieces", tell me exactly what you said to him. Speak slowly and speak loud. A. I says, "Those 'pieces' don't belong to me" I told him, "Malinski—it is up to Malinski. If he wants to give you them, they are yours. I got no part of them 'pieces'; they are all Malinski's."

Q. I am a little ahead. Go back again. When Beitler asked you for the "pieces" what was it

you said? A. "None of them 'pieces' belong to me."

Q. None of which "pieces" belong to you? A. That Malinski got over at the store.

Q. Who mentioned Malinski? Did you or did Beitler? A. Beitler.

Q. Now go back again. Beitler came to you and asked you for "pieces", is that right? A. That is right.

Q. Just tell us what Beitler said when he
1271 asked you for the "pieces"? How did he ask you? A. "As long as you are not going, is it all right to use the 'pieces'? He has got all big ones".

Q. Who has all big ones? A. He figured me and Malinski.

Q. Let us have that again? A. "As long as you are not going, how is it all right to use the 'pieces' "?

Q. Yes. A. I said, "those 'pieces' don't belong to me. They are all Malinski's 'pieces'. If he gives them to you, you got them."

Q. Is that exactly what was said? A. That is
1272 right.

(The last answer was re-read at the request of the Court.)

Q. Is that exactly what was said? A. Yes, sir.

The Court: All right, proceed.

By Mr. Carabba:

Q. Isn't it a fact that you told Beitler where

the "pieces" were when he asked you for them? A. No, sir.

Q. Didn't you tell Beitler where they were?

Mr. McGough: Objected to.

The Court: Objection sustained.

Mr. Carabba: Exception.

Q. You knew when Beitler asked you for guns, didn't you, that Beitler was going in on this Coney Island job, this Coney Island holdup; you knew that, didn't you? 1274

Mr. McGough: Objection, may it please the Court.

The Court: That is overruled.

By the Court:

Q. In other words, you knew what he wanted the guns for? A. Yes.

By Mr. Carabba:

1275

Q. You knew it is the Coney Island stickup, didn't you? A. Yes.

Q. You knew that a day before he asked you for the "pieces", or the same day that he asked you for the guns? A. Same day?

Q. Is that right? A. Same day; yes.

Q. And you knew that when he asked you for the guns they were to be used for the Coney Island job, didn't you? A. That is right.

Q. And you knew where the guns were, didn't you? A. I knew; sure I did.

Q. Didn't you say to Beitler that you would

1276 *Nathan Spielfogel—For People—Cross*

talk to Moish for those guns, to get those guns for Beitler? A. I told him he would have to talk to Moish, they are his "pieces".

Q. Didn't you say to Beitler that you would talk to Moish for the "pieces"? A. I never said that.

Q. You did say to Beitler that Moish had the guns; that is correct, isn't it?

Mr. McGough: That is already cov-
1277 ered.

The Court: Sustained.

Mr. McGough: I object to it.

Mr. Carabba: I think I ought to be given some latitude, Judge Leibowitz, on this score.

The Court: Indeed, you should; but u have been over that several times now.

Mr. Carabba: I take an exception.

The Court: I will let you go over it again a final time. It is a matter of great importance on a proposition of law.

Mr. Carabba: I withdraw it.
1278

The Court: I will let you ask it again if you want.

By Mr. Carabba:

Q. Didn't you say—now listen to the question—say to Beitler, "If Moish gives them to you they are all right with me". A. I did not say them exact words.

Q. What? A. I did not say that.

Q. In words or substance to that effect, they were not yours, you said; that is correct, isn't it? A. That is right.

Q. You said that Moish had them? A. That is right.

Q. And you knew where they were, down at the store, that is correct? You knew where the guns were? A. That is right; I knew where they were.

Q. You told Beitler that if Moish let Beitler have them, that was all right with you; that is correct, too, isn't it? A. No.

Q. What did you say about Moish? A. "If he gives you them, you got them. Otherwise you 1280
won't have them, that is all. They are not mine."

Q. I know that. You told us that. Didn't you say to Beitler that if Moish would let him have the guns it was all right with you. Now think that over.

Mr. McGough: (To the witness) Don't shake your head. Answer, please. (To the Court) Will you instruct him not to shake his head or nod? The stenographer is not getting this on the record.

1281

By the Court:

Q. What was the answer to the last question? Yes or no? A. I don't know what the last question is.

The Court: Read the question.
(Question read.)

A. Yes.

1282 By Mr. Carabba:

Q. Will you tell his Honor, Judge Leibowitz, and the jury, when was it for the first time that you spoke about Rudish in the Fox case? A. In Sing Sing Prison.

Q. District Attorney in Sing Sing? A. No. The first time I ever spoke?

Q. You are referring now to some prisoner, is that correct? A. That is correct.

1283 Q. That you spoke to. But I am asking you now when you for the first time spoke about Rudish being in the Fox case other than to a prisoner at Sing Sing? When was it for the first time that you told the District Attorney or any police officer? A. First time? I guess it was about a week after I was down, I was brought down from Sing Sing.

Q. You were brought down from Sing Sing some time in the month of October, is that correct? A. That is right.

Q. 1942? A. That is right.

1284 Q. Do you know that Rudish was arrested in the month of October, 1942? A. That is right.

Q. And you kept this all to yourself, this conversation with Beitler concerning the guns, which took place in February—February 15th, 1941—and you did not say a word about it until October 19, 1942, for the first time; is that correct?

The Court: You mean to an official?
The Witness: To an official.

Q. Yes. A. That is correct.

Q. You remember, when you were brought

down here by the District Attorney's office, about going in before the Grand Jury? You remember there was some talk about your going before the Grand Jury? A. I don't.

Q. Don't you remember on one occasion you were brought as near as the door of the Grand Jury room, and you were not brought in there? Do you remember that occasion? A. No, sir.

Q. It is a fact that you never testified before the Grand Jury? A. That is right.

Q. Isn't it a fact that your refusal to go 1286
before the Grand Jury was that you did not mention Rudish's name or Malinski's name?

Mr. McGough: Don't answer that. Objection. It presupposes something that did not occur.

(Question read.)

Mr. McGough: There is no evidence of refusal to go before the Grand Jury.

The Court: Sustained.

Mr. Carabba: Exception.

The Court: First ask him if he refused 1287
to go before the Grand Jury.

By Mr. Carabba:

Q. Did you refuse to go before the Grand Jury? A. I was never asked to go in front of the Grand Jury.

Q. Don't you know you were brought down from Sing Sing to testify before the Grand Jury? A. I did not.

Mr. Carabba: May I offer this docu-

1288 ment, which I believe to be the records of the—

The Court: Refer to it by the exhibit for identification number.

Mr. Carabba: It is Defendants' Exhibit B for identification. May I now offer it in evidence, if your Honor pleases, with reference to the second line there, on behalf of the defendant Rudish.

The Court: Objected to?

1289 Mr. McGough: Yes.

The Court: Sustained.

Mr. Carabba: Exception.

By Mr. Carabba:

Q. Isn't it a fact that on October 15, 1942, you were taken from the prison, 161st Street, to go before the Grand Jury of this county?

Mr. McGough: Objection, your Honor. He stated—

The Court: That is overruled

1290

A. What was the question again?

(Question read.)

By the Court:

Q. To your knowledge. A. I remember I was taken over to Raymond Street.

Q. No, no. When you were taken from the jail in the Bronx were you told or did you know that you were taken for the purpose of going before the Grand Jury? A. I did not.

Mr. Carabba: I still press my offer.

The Court: Objection sustained.

Mr. Carabba: Your Honor will grant me an exception.

By Mr. Carabba:

Q. Were you ever, Mr. Spielfogel, in this building on the fourth floor? A. I don't remember.

1292

By the Court:

Q. Prior to your taking the witness-stand here today were you ever in this building? A. This building?

Q. Yes. A. Yes.

By Mr. Carabba:

Q. On the fourth floor? A. I don't know what floor it was on.

Q. Where were you taken? A. I think it is this building. I am not sure if this is the building. 1293

Q. Where were you taken? A. I stood trial in this county.

By the Court:

Q. That is not what Mr. Carabba means. He means in this case, were you taken into this building, during the Fox— A. I don't know whether it was this building or not; I am not sure.

1294

By Mr. Carabba:

Q. Weren't you ever told that the Grand Jury room is on the fourth floor of this building?

Mr. McGough: Objection: The man says he was never asked to go to the Grand Jury and he did not appear before the Grand Jury.

Mr. Carabba: The record does not show that.

1295

The Court: Now, please—now, look—(to the jury): Step out, gentlemen. Don't discuss the case and keep your minds open. We will take a little recess now.

(The jury leaves the room).

Mr. Carabba: Judge Liebowitz, I wish to apologize.

The Court: Mr. Carabba, I have known you for a good many years, and I think you are one of the finest gentlemen that ever came into this court, and one of the most honorable men that ever practiced before this bar.

1296

Mr. Carabba: I wish to apologize.

The Court: Your apology is accepted.

Mr. Carabba: It was spontaneous.

The Court: Were it another type of lawyer who sometimes comes into this court, I would have imposed a very severe penalty upon that lawyer, but I do believe you when you say it was spontaneous.

Mr. Carabba: I mean it.

The Court: Now that the jury is out, I want to explain my ruling to you. The ruling is not arbitrary or capricious. I

kept this record out because what somebody in Bronx County writes in a jail record is not binding on this witness. The fact that some clerk entered on the record "To be taken to the Grand Jury" does not mean that this witness knew that he was to be taken to the Grand Jury. That is not binding on him unless he knew at the time he left that he was to go to the Grand Jury.

Mr. Carabba: I get your Honor's 1298
point.

The Court: But on that record—now that the matter is out in the open—it is of no probative force as far as this witness is concerned. For example, a man is taken out of Raymond Street Jail—an order is sent down to Raymond Street Jail by a Judge, ordering that the prisoner be taken to a certain inquisitorial office. The prisoner may never be told as to the mission; he may be told as to the mission. When this witness testified that he was not 1299
told and he did not know, when he left the Bronx County Jail, that he was to go before the Grand Jury, or that some Judge had sent an order for that purpose, or that the District Attorney had requested him to be taken to Brooklyn for that purpose; the fact that it is on some jail record does not destroy his credibility and it does not negative what he is saying here. That is why I excluded the document.

Mr. Carabba: May I be heard a sec-

ond? I was closely following your Honor's ruling.

The Court: We don't have to pursue it any further.

Mr. Carabba: All right. I was only closely following your Honor's ruling, and where your Honor said, I think, at one stage, that this record could only be offered for the purpose of contradiction and that was all; you see my outburst was spontaneous and that is all I had in mind.

The Court: Along that line, so that counsel may understand my reason for excluding it—

Mr. Carabba: Now I get your point.

The Court: I will tell you why I excluded these records. If this witness had testified that he was not visited by John Doe—

Mr. Carabba: At the prison—

The Court: (Continuing)—I would permit you to offer the records of the prison to show that John Doe did in fact visit him on that day; because that is a statement of fact.

Mr. Carabba: A record.

The Court: Yes; that is an official record that shows that one John Doe did visit him on that day. That would contradict him. That would bear on his credibility. But just being out of there and a notation in a jail record that he was taken out for the purpose of being before the Grand Jury; how does a jail keeper know that he was being taken for that purpose?

Mr. Carabba: Your Honor, from your many years of experience at this bar and on the bench, knows that the District Attorney's letter requested the turning over of this prisoner to a detective, to be brought before the Grand Jury. There is a letter on file.

The Court: That is quite true; but was that information imparted to the witness?

Mr. Carabba: I see your point. I bow to your Honor's ruling. 1304

The Court: If he had said, "Yes, I was told that I was taken before the Grand Jury, I was to go before the Grand Jury," or if you can prove that the information was imparted to him, I will permit you to show that.

Mr. Carabba: All right. Your Honor can see that my exclamation was spontaneous.

The Court: I believe you are absolutely sincere about that, Mr. Carabba, knowing you for the number of years you have practiced before the bar, and considered by this Court to be one of the most reputable attorneys that practice in these courts; I take your word for it that it was spontaneous. Bring back the jury. I might have taken a different action in the case of a different lawyer. 1305

Mr. Solovei: While the jury is out may I have a minute?

The Court: Surely.

Mr. Solovei: This is strictly—I am addressing myself now to that question

of law why I offered these two exhibits in evidence, so that your Honor may, if you like, change your ruling. I offered these two exhibits in evidence in reference to Yellin and Spielfogel, one marked Exhibit B and the other is marked Exhibit A, for the purpose of showing the time that they spent at the District Attorney's office, when they left the 161st Street jail.

The Court: You mean on one occasion or on each occasion?

Mr. Solovei: On all the occasions, on all these visits. It may mean something.

The Court: He has testified unequivocally that he has been to the District Attorney's office on sixty occasions and that he has spent hours upon hours upon hours in the District Attorney's office; and therefore, if that is the reason for offering these records, I sustain the objection.

Mr. Solovei: The hours cannot properly be explained except by these records, I would say to your Honor.

The Court: These records merely show when he left the jail and when he came back and not what happened in the interim. The records do not show, for example, how long it took them to go from the jail down to the District Attorney's office; that is, what the condition of the transportation was, whether there was a delay in the subway; and all these things are immaterial. You cannot get any more out of this witness than what he has testified. There is nothing contradictory in

these statements. I will sustain the objection.

Mr. Solovei: Under the Civil Practice Act, records kept in the regular course of business are admissible. These records are from the Department of Corrections.

The Court: They must be material. The objection is sustained. Suppose you hold the jury for a few minutes and we will take a short breathing spell here.

1310

(After short recess. Trial resumed).

The Court: Gentlemen of the jury, I think it is fair to say at this time that there is no evidence before this jury at this time—there is no evidence of any record before you that Spielfogel was taken from the jail to go before the Grand Jury, with knowledge on his part that he was to go before the Grand Jury. There is no such evidence before you by reason of what Mr. Carabba said. That remark that was made by Mr. Carabba 1311
should not have been made, and that is not evidence in this case at all. The remark made by Mr. Carabba was inadvertently made and was not intended by him to be made, and was not intended by Mr. Carabba to affect you in any shape, form or manner. What I am saying now is not intended as any personal criticism of Mr. Carabba, who is a fine, upstanding member of our bar. Do you want this witness back, Mr. Carabba?

Mr. Carabba: I would like to have him back.

NATHAN SPIELFOGEL, resumes the stand:

*Cross-examination by Mr. Carabba continued:*

1312 Q. Now, Spielfogel, on the night of this murder, you sav you saw Malinski, is that correct? A. That is correct.

Q. At your home? A. That is correct.

Q. And with him you dressed? A. That is right.

1313 Q. Left your home and you went with him to a club, is that correct? A. That is correct.

Q. And you were approximately about 40 or 45 minutes with him at the club? A. Around that.

Q. The Citadel Club, is that what you call it? A. About that—Citadel Club.

Q. You and he left? A. That is correct.

Q. Thereafter you went where? A. To the Melrose.

Q. Is the Melrose a restaurant, do I understand? A. Yes, sir.

1314 Q. How long did you remain together there? A. About two minutes.

Q. And from there where did you go? A. We took the bus at 10th Street and Avenue C.

Q. Where did you go then? A. To 9th Street and First Avenue.

Q. Well, at 9th Street and First Avenue, is that the location where the guns were? A. No, sir.

Q. What is that location? A. 10th Street and First Avenue.

Q. Did you go to 10th Street and First Avenue? A. I did.

Q. Is that the place where you say Malinski worked? A. Yes. 1315

Q. You went into the place, did you not? A. I did not.

Q. Did you know at that time, you say, that Malinski had the money on his person; is that right? A. Yes, sir—change.

Q. The fruits of this robbery on his person? A. The change.

Q. You knew it was the fruits of this stickup down at Coney Island? A. I did. 1316

Q. You knew that when he came to your house? A. Yes.

Q. You knew that while you were talking to him at the club? A. Yes.

Q. And you knew that up until the time you arrived at the place where you say Malinski put the money away? A. Yes.

Q. What happened to the so-called "pieces", the guns?

By the Court:

Q. Do you know of your own knowledge? A. The way I understand— 1317

The Court: Are you asking for hearsay?

Mr. Carabba: I am asking for his own knowledge.

The Court: Are you asking for hearsay or what he knows himself, of his own knowledge?

Mr. Carabba: That is what I am asking.

By the Court:

Q. Do you know what I mean? A. What he told me?

The Court: Is that what you are asking for?

Mr. Carabba: I am asking what happened to the guns, what he knows happened to the guns.

The Court: He is a lay witness.

Mr. Carabba: I cannot use this underworld language.

The Court: That is not the point.

By the Court:

Q. Do you know what happened to the guns only from what you were told or did you actually see? A. I did not see.

By Mr. Carabba:

Q. Did you ever mention at the Bossert Hotel, to the detectives, that Rudish was involved in this crime? A. Yes.

Q. I am talking about the Bossert? A. Yes.

Q. Was there a stenographer present taking down the answers to the questions that were being put to you at that time? A. No, sir.

Q. Who was the detective that was present? A. I would say it was Lieutenant McNaily.

Q. That was some time in October of 1942, is that correct? A. That is correct.

Q. And that is the first time that you ever

mentioned Rudish's name, isn't it? A. About a week after I came down.

Q. A week after you came down? You mean when you were brought down from Sing Sing Prison, is that correct? A. Yes.

Q. Did you talk to Yellin last night after you left the courtroom? A. Yellin? Yes.

Q. Did you hear the admonishment of Judge Leibowitz before court adjourned yesterday? A. I did.

Q. Notwithstanding that, you talked with 1322
Yellin?

The Court: Now wait.

Mr. McGough: Just a minute.

Mr. Carabba: Let me press this.

The Court: Now wait, Mr. Carabba; let us be fair about this. I gave everybody instructions that they were not to talk about the case. He may have talked to Yellin about the Dodgers-Giant box scores or something of that kind. That is not in violation of my order. First find 1323
out if he talked about the case.

Mr. Carabba: My friend objects before I have an opportunity to press the objection, and the witness now hears what is being said here, and I wanted to follow that up. I say Mr. McGough's objection is untimely at this time—preliminary.

(Mr. Carabba's question read at the request of the Court.)

The Court: I did not tell him that he should not talk to Yellin. I told him nobody was to talk about this case or about any features of the case.

By Mr. Carabba:

Q. Did you talk to Yellin about this case? A. I did not.

Q. Did anybody talk to you about this case yesterday afternoon after you left the Court? A. No, sir.

Q. During this last recess we have had, a few moments ago, did you talk to anybody about this case? A. I did not.

Q. Did anybody talk to you about this case during this recess? A. No, sir.

Mr. Carabba: I think that is all.

Mr. Geoghan: In order that the record may be straight, I want to offer in evidence the records that were brought down from the jail. I make that motion on behalf of Indovino. I think the other two have made it, and they have their exception. May I have an exception as well? I offer it and take an exception.

The Court: Same ruling. You are offering it not for the purpose of contradicting anything?

Mr. Geoghan: No.

The Court: Just offering it.

Mr. Geoghan: Yes. On behalf of Indovino, I have no question to ask this witness.

By Mr. Solovei:

Q. In May of 1941, were you arrested in New York County, and after your arrest, did any

police officers talk to you about the case? A. 1941.

Q. Yes, when you were arrested in your case, in New York? A. No, sir.

Q. At no time? A. Not that I can remember.

Q. When you were at Police Headquarters were you asked questions about the Fox murder? A. I was not.

Q. After you were convicted in New York, did they ask you questions about the Fox murder? A. No, sir. 1328

Q. What? A. No, sir.

Q. By anybody? A. After I was convicted?

Q. Yes. A. The first time was up in the jail. I was up there about eleven months, ten months.

Q. I am asking about after you were convicted in New York. I did not ask you about just today or yesterday? A. Nobody; never.

Q. You were sentenced in December, 1941 to your present sentence, is that correct? A. Yes.

Q. Before you went to Sing Sing, and while you were at the Tombs Prison in New York County, did any police officers talk to you about 1329 the Fox murder? A. At the Tombs Prison?

Q. Yes. A. No, sir.

Q. Did they take you to Headquarters and examine you there? A. No, sir.

Q. Did they take you to any District Attorney's office and examine you about the Fox murder? A. No, sir.

Q. At no time? A. No, sir.

Q. Are you in doubt about it? A. Not since I came down I was never asked.

Q. I am not talking about that now, sir. I

1330 just don't want to confuse you. I am only talking about—

By the Court:

Q. Before you went to Sing Sing, did any policeman or any official ask you about the Fox murder? A. No, sir.

By Mr. Solovei:

1331 Q. Just one more question: Can you tell now— A. What was that?

Q. I didn't finish my question. I will withdraw that question. Did you and Yellin talk about the Fox case while you were in the Tombs Prison awaiting sentence or awaiting trial? A. I never talked to him about it in the Tombs.

Q. You and he never spoke about it at all? A. Not in the Tombs.

Q. When you got to Sing Sing, did you and Yellin discuss the Fox case? A. I did not.

Q. Never discussed it with him at any time
1332 at all, is that correct? A. Sing Sing?

Q. Any time, any place?

The Court: You mean after the killing?

Q. At any time. Of course, it would be after the killing. It could not be before. A. I don't remember ever talking to him?

Q. You don't remember ever talking to him about this case at all? A. No.

Mr. Solovei: That is all.

*Redirect examination by Mr. McGough*:

Q. Yesterday when one of the lawyers was questioning you—I think it was Mr. Solovei—mention was made of certain days when you left the prison and did not return. Are we to understand that when you left the prison you did not return at all that night? A. I always returned.

Q. Or did you return past midnight of that day? A. Past midnight of that day.

Q. So that there was never a night that you 1334
spent away from the jail a night where you slept somewheres else; is that what you mean? A. There is only one day that I slept in the station house.

Q. With that one exception did you spend all your sleeping time at the 161st Street Jail? A. I did.

Q. Now, when you spoke to Beitler with reference to Malinski and the guns, did you say to Beitler that if Moish would let you have them that it was all right with you?

1335

Mr. Carabba: I object to that.
The Court: Overruled.

Q. Just a minute, let me finish. Or did you tell Beitler, "If Moish lets you have them, then you got them."

Mr. Solovei: I object.
Mr. Carabba: Already answered.
The Court: Overruled.
Mr. Carabba: I object to it on behalf of the defendant Rudish.

Mr. Solovei: I object to it. It is incompetent, irrelevant and immaterial, not binding on the defendant Malinski.

The Court: Sustained on that ground.

Mr. Geoghan: Same motion for Indovino.

The Court: Sustained.

Mr. Carabba: Well, I make the same motion on behalf of the defendant Rudish.

The Court: Well,—

1337 Mr. McGough: This, your Honor, is redirect, brought on, I submit, by questions that were asked by Mr. Carabba, counsel for Jacob Rudish; and I submit it is competent. I think the record is—

Mr. Carabba: I will withdraw that objection.

Mr. McGough: I think the record has two different answers, and I am entitled to find out what the witness's best recollection is.

The Court: The objection is withdrawn.

1338 Mr. Solovei: My objection, of course, stands.

The Court: Whatever he is testifying now is not binding on Malinski.

By Mr. McGough:

Q. Did you tell Beitler that if Moish would let you have them, it was all right with you; or did you tell Beitler that "if Moish lets you have them then you got them." A. "If Moish lets you have them, you got them."

Mr. McGough: That is all.

By the Court:

Q. Is that exactly what you said? A. That is right.

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CORPORAL SIMON EISLER, residing at 1846 Pitkin Avenue, Brooklyn, N. Y., called as a witness in behalf of the People, being first duly 1340
sworn, by the clerk, Mr. Jehle, testifies as follows:

*Direct examination by Mr. McGough:*

Q. Your name is Simon Eisler, is that correct? A. Yes, sir.

Q. You are a Corporal in the United States Army? A. Yes, sir.

Q. Where are you presently stationed or assigned, please. A. Fort Lewis, Washington.

Q. Is that in Tacoma, Washington? A. Yes.

1341

Q. Did you make a trip from Tacoma, Washington, at the request of the District Attorney, to testify in this case? A. Yes.

Q. Do you have any nickname? Do you have any nickname in private life? A. Yes.

Q. What do they call you? A. Red Tiplet.

By the Court:

Q. Tiplet? A. Tiplet.

Q. Is that a pigeon? A. Yes.

Q. A red pigeon? A. Yes.

1342 *Cpl. Simon Eisler—For People—Direct*

The Court: A tiplet is a breed of pigeon.

By Mr. McGough:

Q. How long have you been in the Army, please? A. Since January 20, 1941.

Q. That would be, roughly, about two and a half years? A. Yes.

Q. Do you know the defendant, Jake Rudish, sitting here in Court? A. Yes.

1343

Q. How long do you know him, please? A. About 15 years.

Q. Do you know the defendant, Morris Malinski? A. Yes, sir.

Q. How long do you know him? A. About three years.

Q. Now, some time in the latter part of 1940, or the early part of 1941, did you have any conversation with the defendant Malinski? A. Yes, sir.

Q. With respect to an errand? A. Yes, sir.

Q. Tell this Court and jury, please where you were at that time when you had the conversation?

1344

Mr. Solovei: I object to this line of testimony on the ground it is highly improper, incompetent, irrelevant and immaterial, and too remote from the alleged time of the alleged commission of this crime, as alleged in this indictment.

The Court: I cannot tell at this time. I am not a fortune teller or a soothsayer. Proceed.

Mr. Solovei: This is prior to January, 1941.

The Court: Proceed.

Mr. Solovei: I object.

Mr. Morritt: Defendant Rudish makes the same objection.

By Mr. McGough:

Q. Where was the conversation? A. Citadel Club, Fourth Street and Avenue C. 1346

Q. County of New York? A. Yes.

Q. Now, will you tell us please, what the conversation was, what he said to you and what you said to him?

Mr. Solovei: I object to that.

The Court: Will you step up here, please, Mr. District Attorney, and tell me what you propose to show.

(Mr. McGough confers with the Court.)

The Court: The objection is overruled.

Mr. Geoghan: May I interpose an objection on behalf of Indovino and ask your 1347 Honor to instruct the jury that whatever he is going to testify to is not binding on Indovino?

The Court: The jury is so instructed.

Mr. Carabba: May I respectfully object on behalf of the defendant Rudish as to anything he may testify in the absence of the defendant Rudish.

The Court: Sustained.

Mr. Carabba: May the jury be instructed?

1348 *Cpl. Simon Eisler—For People—Direct*

The Court: The jury is so instructed. (Question read.)

A. I was asked—

Mr. Solovei: Have we got the date on that, your Honor?

Q. Can you fix the time for counsel, please? Give us your best recollection of the time? A. The latter part of December. The exact date, I
1349 don't know.

By Mr. Solovei:

Q. What year? A. 1940.

By Mr. McGough:

Q. Was it around the holidays, if you know? A. Pretty close to them.

Q. Was it before or after the holidays? A. Before.

1350

Mr. Solovei: I renew my objection.

The Court: Objection sustained.

By Mr. McGough:

Q. All right, give us the conversation, please. A. I was asked—

Mr. Solovei: I object.

The Court: You made your objection and I have ruled on it.

Mr. Solovei: You just said, "Sustained".

The Court: I beg your pardon. It is my fault. I apologize. I meant "overruled."

Mr. Solovei: I take an exception.

A. I was given a ticket to pick up a package, in the Terminal and then bring it down to the Citadel Club.

Q. Who gave you the ticket? A. Moish Malinski.

Q. What kind of ticket was it? A. It was a 1352
stub.

Q. What kind of stub? A. That you get when you deposit packages in the subway.

Q. Did he say anything to you when he gave you the stub? A. No, sir; just asked me to pick the package up.

Q. Did he tell you where to go for the package? A. He told me where to go for it, yes, sir.

Q. What did he say, please? A. He just asked me to pick the package up and bring it back.

Q. Where? A. At the Citadel Club.

Q. Where did he ask you to go to get the pack- 1353
age? A. It was at the Citadel Club that he asked me to go for the package.

Q. I understand that the conversation was at the Citadel Club; correct? A. Yes.

Q. Did he ask you to go some place and pick up a package? A. Yes.

Q. Where was that some place? A. Vicinity of 42nd Street.

Q. Did he give you any money? A. Yes; four dollars. Gave me four dollars. I went uptown and picked the package up and I brought it back and when I brought it back he had opened it, and

I saw four pistols, two fountain pen guns and two .38's.

Q. How were the .38's, were they wrapped or unwrapped? A. They were wrapped in stockings.

Q. In addition to the fountain pen guns and the two .38's, did you see any other object in the package? A. There were more stockings, but I don't know what was in them.

Q. Who opened the package when you brought it back to the Citadel Club? A. Moish Malinski.

Q. At the time you went uptown to get the package, did you know what the package contained? A. No, sir.

Q. When for the first time did you know the contents? A. When Moish Malinski opened the package.

Q. That was the same day, was it? A. Yes, sir.

Q. You don't know the defendant Indovino, do you? A. No.

Mr. Solovei: I now move to strike the testimony out on the ground it is highly improper, prejudicial to the defendant, violation of the defendant's rights; it is incompetent, irrelevant and immaterial, and in no wise connected with the alleged crime as alleged in this indictment, February 15th, 1941.

The Court: I call to your attention the testimony of the witness, Spielfogel. Of course, his credibility is entirely for the jury. I am merely referring to testimony, not to facts. The facts the jury must determine for themselves. But merely on

your objection, I call your attention to the testimony of Spielfogel to the effect that he had a conversation with Malinski, and that Malinski told him that the guns that were used in the killing of Patrolman Fox were the same guns that were taken by Red Tiplet from some receptacle or depository in the neighborhood of the Grand Central Station. That is the sole reason why I am admitting this testimony.

Mr. Solovei: And I except to your Honor's reasoning. 1358

The Court: All right. Proceed to cross-examine.

Mr. Morritt: The defendant Rudish makes the same objection.

The Court: The objection is sustained as far as the other defendants are concerned, other than the defendant Malinski.

Mr. Solovei: I now, in view of this line of testimony, move for the withdrawal of a juror and the declaration of a mistrial.

The Court: Motion denied; exception. 1359

*Cross-examination by Mr. Solovei:*

Q. How long do you know Spielfogel, Eisler? A. About four years.

Q. Are you very friendly with him? A. An acquaintance.

Q. Been out with him? A. No, sir.

Q. Did you meet him at the Citadel Club? A. I saw him there.

Q. How often did you see him there? A. Not very often.

1360 Q. Would you say at an average of once or twice a week? A. Something like that.

Q. Play cards with him? A. No, sir.

Q. Eat with him? A. No, sir.

Q. Drink with him? A. No, sir.

Q. Did you visit his home? A. No, sir.

Q. Did he visit your home? A. No, sir.

Q. Do you know Yellin? A. Yes, sir.

Q. How well do you know Yellin? A. Know him for quite a few years.

1361 Q. How long? A. Practically all my life.

Q. You live now on Pitkin Avenue, do you? A. Yes, sir.

Q. Before that, you lived on the East Side? A. Yes, sir.

Q. And you used to go out with Yellin? A. Yes, sir.

(At this point, at the request of the Court, the stenographer read the testimony of the witness to the effect that he entered the Army, January 20, 1941.)

1362 By the Court:

Q. In other words, you were in the Army before this crime was even committed, weren't you? A. Yes, sir.

By Mr. Solovei:

Q. Did you go out with Yellin? A. Yes, sir.

Q. You knew that Yellin and Spielfogel were two professional stickup men, didn't you? A. No, sir.

Q. Did you ever see guns on them? A. No, sir.

Q. You live in the Brownsville section of Brooklyn, and you used to go to the Citadel Club several times a week, is that it? A. No, sir.

Q. How often did you go there? A. At the time that I went to the Citadel Club I lived a half a block away from the club.

Q. Where did you live in 1940? A. 336 East Fourth Street.

Q. How far away was that from where Spielfogel lived? 1364 A. Don't know where Spielfogel lived.

Q. How far was it away from where Yeliin lived? A. Four blocks.

Q. Were you working at that time? A. No, sir.

Q. How long were you out of employment? A. About a year.

Q. In other words, for the entire year of 1940, you were not working at all? A. No, sir.

Q. Did you work in 1939? A. Yes, sir.

Q. Where did you work? A. Garment Center.

Q. Whom did you work for? 1365 A. I forget the name of the concern, but it was a trucking outfit on 37th, 222 West 37th Street.

Q. How long did you work there? A. About seven months.

Q. Were you a Union man? A. No, sir.

Q. Were you a helper on a truck? A. I pushed the truck, hand truck.

Q. One of these hand trucks? A. Yes.

Q. You don't know the name of the firm you worked for? A. I don't remember it right offhand.

1366 *Cpl. Simon Eisler—For People—Cross*

Q. How long did you work there? Seven months? A. Yes.

Q. Where did you work before that? A. In a laundry on 99th Street.

Q. How long did you work there? A. About three weeks.

Q. Do you know what number 99th Street you worked at? A. Between First and Second Avenue.

Q. How often did you see Spielfogel when you
1367 were not working in 1940? See him often? A. No, sir.

Q. Did you visit the Citadel Club often when you were not working? A. Yes, sir.

Q. Did you play cards there? A. Yes, sir.

Q. Play for big stakes? A. No, sir.

Q. Shoot crap there? A. Not in the club.

Q. Where did you shoot crap? A. In the street.

Q. You had no bank account in 1940, did you? A. No, sir.

Q. And the only visible means you had of supporting yourself was the work that you ac-
1368 tually did yourself, is that correct? A. Yes, sir.

Q. Did you live with your family at that time? A. Yes, sir.

Q. You were not married? A. No, sir.

Q. Shoot crap with Spielfogel? A. No, sir.

Q. Shoot crap with Yellin? A. Yes, sir.

Q. In the street? A. Yes, sir.

Q. Did you go to any of the private crap games? A. No, sir.

Q. Did you shoot crap games at the Citadel Club? A. No, sir.

Q. Now, they call you Tiplet, is that it? A. Yes, sir.

Q. Were you ever convicted of any crime? A. No, sir.

By the Court:

Q. What? A. No, sir.

By Mr. Solovei:

Q. Did you know Spielfogel when he—were you friendly with Spielfogel when he had a case pending here in Brooklyn? A. No, sir. 1370

Q. When was it for the first time in your life that you ever spoke to anybody about this case? A. When I was brought down here.

Q. When was that? A. June 17th, June 12th rather.

Q. Of this year? A. Yes, sir.

Q. Before that, you never told anybody about it? A. I did not know anything about it.

Q. You never spoke to Spielfogel? A. No, sir.

Q. You never told Spielfogel about the package you went for? A. No, sir. 1371

Q. And you never told him that Malinski ever sent you for a package somewheres? A. No, sir.

Q. You never told Yellin about it? A. No, sir.

Q. And you never told any police officers about it? A. No.

Q. And then at Citadel Club sometime in December of 1940, this happened? A. Yes, sir.

Q. Was it in the early part of December? A. No; a little before Christmas.

Q. Who was present when Malinski asked you to go after the package? A. Nobody.

1372 *Cpl. Simon Eisler—For People—Cross*

Q. Where was it he sent you for this package? A. It was in the vicinity of 42nd Street.

Q. What kind of a place was it? A. It was a newsstand.

Q. Where is the newsstand? A. Don't know the exact address.

Q. Was it a corner newsstand? A. No, sir; it was in the subway.

Q. In the subway at a newsstand? A. Yes.

Q. One of these newsstands operated by the
1373 railroad company? A. No, sir; it was cigar stand and newsstand.

Q. In the subway station? A. Yes, sir.

Q. 42nd Street and what? Broadway, Lexington Avenue—what? A. In that vicinity, I don't know the exact address.

Q. Did you get out of the subway at 42nd Street? A. Yes.

Q. Was it at the Grand Central Station? A. I don't remember.

Q. Was it at the 42nd Street and Broadway terminal? A. I don't remember.

Q. Did you talk to some man at the cigar
1374 stand? A. Yes.

Q. Do you know the man's name you spoke to? A. No, sir.

Q. Was there more than one man there behind the cigar stand? A. No, sir.

Q. Was this package wrapped in newspaper or wrapping paper? A. Wrapping paper.

Q. Was not in a box? A. It was in a box.

Q. In a box? A. Yes.

Q. The box was wrapped in wrapping paper? A. Yes, sir.

Q. Did you have a receipt or something to give to the man from the stand? A. Yes, sir.

Q. What was on the receipt? A. Just a stub with a number.

Q. What kind of stub was it? A. Yellow.

Q. What was it made out of? A. Cardboard.

Q. A plain ordinary cardboard stub? A. Yes, sir.

Q. And had a number on it? A. Yes, sir.

Q. Did it have a ring or anything on this cardboard stub? A. Yes, sir. 1376

Q. Did the ring have a number? A. No, sir.

Q. Outside of the number was there any name or address on this cardboard stub? A. There was writing on there. I believe it did have an address, but I don't remember.

Q. All he told you, he said, "You go to 42nd Street to a newsstand and give up this stub, and he will give you a package"? Is that it? A. Yes, sir.

Q. And you, without knowing just who the person was you were going to talk to or where this newsstand was situated, you just took this 1377
this stub and went to 42nd Street to a newsstand; is that right? A. That is right.

Q. You say you got a package? A. That is right.

Q. And then you say you took this package and went back to the Citadel Club; is that right? A. Yes.

Q. Was this during the day time? A. The afternoon.

Q. Was it during the week? A. Yes, sir.

Q. What time of day was it would you say? A. When I came back?

1378 Q. When you went there, and came back, yes. A. When I went there, it was in the morning.

Q. In the morning? A. Yes, sir.

Q. What time did you come back? A. About three o'clock, three or four o'clock.

Q. Did you get the package in the morning? A. No, sir.

Q. Did you see Spielfogel in the morning? A. No, sir.

Q. Did you see Yellin in the morning? A.
1379 No, sir.

Q. Did you go back to the Citadel Club? A. Yes, sir.

Q. And when you went back there did you hang around the Citadel Club? A. Yes, sir.

Q. And then you went back to this place again? A. No, sir.

Q. Did not go back again? A. No, sir.

Q. Did you have the package with you? A. Yes, sir.

Q. So you did not go directly from the stand where you got the package directly back to the
1380 Citadel Club, is that it? A. I went right back.

Q. You say you got it in the morning and came back in the afternoon? A. I said I picked it up after I had gone; coming back I picked it up.

Q. If I understand you right you said you left in the morning for the package, am I right? A. I left in the morning to go out looking for a job.

Q. So that he gave you this cardboard ring, with a ring on it— A. Stub.

Q. In the morning? A. Gave it to me the night before.

Q. Gave it to you the night before? A. Yes, sir.

Q. Well, I think you said a little while ago he gave it to you in the morning, didn't you? A. No, sir.

Q. Now he gave it to you the night before and asked you to stop off at 42nd Street to get this package? A. Yes, sir.

Q. So that you went out for a job in the morning? A. Yes, sir.

Q. Is that right? A. Yes, sir. 138

Q. You did not get a job? A. No, sir.

Q. And then you went to some newstand on 42nd Street? A. Yes, sir.

Q. And got this package? A. Yes, sir.

Q. And then went back to the club, is that right? A. Yes, sir.

Q. And when you got back to the club you saw Spielfogel there? A. No.

Q. Saw Yellin there? A. No.

Q. You, Spielfogel and Yellin went out for lunch yesterday, didn't you? A. Yes, sir.

Q. Did you go any other time for lunch with them? A. Yes, sir. 138

Q. Often? A. Once a day.

Q. Once a day? A. Yes, sir.

Q. With Yellin, too? A. Yes, sir.

Q. Go out to dinner with him, too? A. No, sir.

Q. Did you have dinner with him at any time at all? A. No, sir.

Q. You would all sit at one table together while you were having your lunch? A. Yes.

1384 *Cpl. Simon Eisler—For People—Cross*

**By the Court:**

**Q. Was there a detective there? A. Yes, sir.**

**By Mr. Solovei:**

**Q. Now when you got back to the Citadel Club were there many people there? A. No, sir.**

**Q. How many people were there? A. I don't remember.**

1385 **Q. What? A. I don't know.**

**Q. When you came back did you sit and speak to Malinski in some big room there? A. It was upstairs.**

**Q. You went upstairs? A. Yes, sir.**

**Q. With him? A. Yes, sir.**

**Q. Who else went up? A. Nobody.**

**Q. Was there anybody upstairs? A. No, sir.**

**Q. And then you say in your presence he opened this box? A. Yes, sir.**

**Q. Did you say anything when he opened the box? A. No, sir.**

1386 **Q. Did not say a word at all to him? A. No, sir.**

**Q. He said nothing at all to you? A. No, sir.**

**Q. Just opened the box and closed the box? A. That is right.**

**Q. What did you do after that? A. Walked away.**

**Q. Did you remain there? A. I walked down. I don't know where he went.**

**Q. When you say you walked down do you mean you walked down and left the building or remained in the building? A. Left the building.**

Q. Did you come back again that same day? A. Yes; sir.

Q. Did you see him there that same day? A. No, sir.

Q. Did you see Spielfogel or Yellin there that same day? A. No.

Q. How soon after this day did you meet Spielfogel or Yellin? A. The day after, two days after; don't remember.

Q. Did you tell them about the package? A. No, sir. 1388

Q. Did you tell them what you saw? A. No, sir.

Q. Did you tell anybody what you saw? A. No, sir.

Q. Not even your friend Yellin? A. No, sir.

Q. Prior to your coming to court here you spoke to Spielfogel, didn't you? A. Today?

Q. No; before today? A. No, sir.

Q. You mean you did not talk to him since you are back? A. Yes; I spoke to him since I am back; yes.

Q. When did you get back? On June 12th, 1389 you say? A. Yes, sir.

Q. Where was it that you saw Spielfogel on June 12th? A. District Attorney's office.

Q. How much time did you spend with him there? A. No time.

Q. Were you sitting in the same room with him? A. No, sir.

Q. Did you sit in the same room with Yellin? A. No, sir.

Q. Was it in the morning of June 12, 1943, when you saw Spielfogel and Yellin at the District Attorney's office? A. Yes, sir.

1390

Q. Did you go out to lunch together? A. Yes, sir.

Q. Did you talk to him while at lunch here? A. Yes, sir.

Q. Both Spielfogel and Yellin? A. Yes, sir.

Q. Did you tell Spielfogel or Yellin what you came down for? A. No, sir.

Q. Did Spielfogel tell you what he knew? A. No, sir.

Q. Did Yellin tell you what he knew? A.

1391 No, sir.

Q. Now, on the 13th and 14th and 15th did the same thing transpire? A. No, sir.

Q. You saw each other during those times, didn't you? A. No, sir.

Q. Did you see him on the 13th? A. No, sir. The 13th was a Sunday.

Q. Did not see him? A. No, sir.

Q. The 12th was a Saturday? A. Yes.

Q. Do you know what time it was that you arrived at the District Attorney's office on Saturday the 12th? A. About quarter past ten.

Q. In the morning? A. Yes, sir.

1392

Q. And what time was it that you left there? A. About three o'clock.

Q. In the afternoon? A. Yes, sir.

Q. And you made a statement? A. Yes, sir.

Q. That was the first time you ever made a statement? A. That is right.

Q. Before that you never said anything to anybody and you never spoke to anybody about it at all; is that right? A. That is right.

Q. On the 13th did you see Spielfogel, on Sunday the 13th? A. No, sir.

Q. Yellin? A. No, sir.

Q. Did you go back to the District Attorney's office? A. No, sir.

Q. So that on the 13th you spoke to nobody about this case or saw nobody about it; is that right? A. That is right.

Q. Now on the 14th were you again in the District Attorney's office? A. No, sir.

Q. Were you here? A. No, sir.

Q. Where were you on the 14th? A. Home.

Q. You were not around the court at all? A. No, sir.

Q. At any time? A. No, sir.

Q. Were you in the District Attorney's office? A. That is right.

Q. And on the 15th did you see Spielfogel then? A. Yes, sir.

Q. Where? A. District Attorney's office.

Q. What time did you see him there? A. The evening.

Q. What time did you go there? A. About 4:30.

Q. Did you see Yellin there? A. Yes, sir.

Q. Were you in one room together? A. No, sir.

Q. Where did you see him? A. In the corridor.

Q. Did you talk to him? A. No, sir.

Q. Said "hello" to him? A. Said "hello".

Q. To either one or both of them? A. That is right.

Q. Did you go out to dinner that night together? A. No, sir.

Q. Did you have lunch that day together? A. No, sir.

1396 Q. How many times did you lunch with Spielfogel and Yellin? A. Two or three times.

Q. Can you tell us when those two or three times were? A. Yesterday afternoon, Tuesday—

Q. And Wednesday? A. Saturday.

Q. Tuesday was the 15th? A. Yes, sir.

Q. How about Wednesday the 16th? A. Had dinner with them—lunch, rather—during the afternoon.

1397 Q. Just had luńch with them? A. Yes.

Q. No dinner? A. No dinner.

Q. Wednesday the 16th was only yesterday? A. That is right.

Q. You left the court-room with them, too, didn't you? A. That is right.

Q. Go back to the District Attorney's office with them? A. Went home.

Q. Did you go back to the District Attorney's office first? A. No, sir.

Q. You walked with them and while walking with them did you talk to them? A. No, sir.

1398 Q. You are not trying to protect Spielfogel here, are you? A. No.

Q. Or Yellin either, are you? A. No.

Q. You are very friendly witht Yellin, aren't you? A. Yes.

Q. You are pretty friendly witht Spielfogel? A. No, sir.

Q. Did Spielfogel tell you he was testifying in this case? A. No, sir.

Q. Not a word at all about his testimony? A. No, sir.

Q. You did not ask him what he was doing down here? A. Didn't ask him anything.

Q. Did not ask Yellin what he was doing? A. Didn't ask him anything.

Q. They did not ask you what you were doing down here? A. No, sir.

Q. Do you know whether Yellin and Spielfogel have been doing long terms of imprisonment? A. I knew Yellin was.

Q. You did not know what Spielfogel was? A. No, sir.

Q. You were not here when Yellin was sentenced, were you? A. Yes, sir. 1400

Q. You were in the States? A. Yes, sir.

Q. Did you know that Yellin and Spielfogel together were convicted of the crime of robbery? A. No, sir.

Q. Yellin never told you that? A. No, sir.

Q. Did Yellin tell you what sentence he got? A. No, sir.

Q. Did you at any time find out what sentence he got? A. Somebody told me something.

Q. What? A. About it, but it did not mean much.

Q. What? A. Did not mean anything. Somebody told me something about it. 1401

Q. You would like to help out Yellin if you can if you thought you could, wouldn't you? A. No, sir.

Q. The Judge asked you about the name Tiplet. A. Yes, sir.

Q. Red.

The Court: Tiplet.

Q. Is this Tiplet or Tipler? A. Tiplet.

1402 *Cpl. Simon Eisler—For People—Cross*

By the Court:

Q. You are Red Tiplet? A. That is right.

By Mr. Solovei:

Q. Did they give you that name Red Tiplet because you were a bird? A. No, sir.

Mr. McGough: Object to that.

1403 Q. Was that just a nickname that the men around the neighborhood gave you, the boys around the neighborhood? A. That is right.

Q. Were you ever in the Court of Special Sessions? A. No, sir.

Q. What? A. No, sir.

Q. Never in any court? A. No, sir

Q. Charged with anything? A. No, sir.

The Court: You know that question is improper.

Mr. Solovei: I am going to follow it

1404 up.

The Court: I will let you ask it anyhow.

Mr. Solovei: I am going to follow it up.

The Court: That is all right.

By Mr. Solovei:

Q. You know what a suspended sentence means? A. Yes.

Q. Did you ever get anything like that? A. No, sir.

Mr. Solovei: That is the only reason I asked.

The Court: All right.

Q. Were you a friend of Abe Reles? A. Who?

Q. Abe Reles from Brownsville? A. No, sir.

Q. Did you know Beitler? A. Who?

Q. Beitler—Ebbie? A. Yes, sir.

Q. How well did you know Beitler, Ebbie? A. Went to school with him.

Q. What name did you know him by? A. Ebbie.

By the Court:

Q. Brought up on the East Side? A. Yes.

Q. Around what street? A. Fifth Street, sir.

Q. Right in the tenement house district? A. Yes.

By Mr. Solovei:

Q. Did you see him over at the Citadel Club? A. No, sir; never came there.

Q. Never came to the Citadel Club? A. No, sir.

Q. Did you see him with Spielfogel? A. No, sir.

Q. Or Yellin? A. No, sir.

Q. Where did you see Beitler when you did see him? A. I saw Beitler many years ago, about six or seven years back.

Q. And not since then? A. No, sir.

Q. And you mean to tell this Court and jury that the defendant Malinski just opened this package and exhibited to you four revolvers;

is that right? A. I saw two revolvers and two fountain pen guns.

Q. Two fountain pen revolvers?

The Court: Two fountain pen guns.

Q. He just opened the package and showed them to you? A. Yes.

Q. Did you examine them? A. No, sir.

Q. Did not look into it? A Saw them and walked away.

1409 Q. Just saw them and walked away? A. Yes.

Q. It was something unusual for you to see, though? A. Saw it on cops.

Q. What? A. I saw them before, patrolmen.

Q. You saw cops have them? A. That is right.

Q. Saw them in the Army too? A. That is right.

Q. But this, at this particular time, this was something unusual, wasn't it? A. That is right.

Q. Something that never happened in your life before, did it? A. That is right.

Q. And yet you kept it as a secret in the inner
1410 recesses of your heart and never said anything about it to anybody at all? A. That is right.

Q. Never to your friend Yellin, and never your friend, Spielfogel? A. No.

The Court: He did not say Spielfogel was his friend.

By Mr. Solovei:

Q. You said Spielfogel was your friend? A. Acquaintance.

Q. Isn't he a friend of yours? A. I know him.

Q. Isn't he a friend of yours? A. Never go out with him; we were not friends.

Q. You were in his company with Yellin at times, weren't you? A. No, sir.

Q. You never told it to members of your family either, did you? A. No, sir.

Q. Of course, you never told it to any police officers? A. No, sir.

Q. And the first time that ever in your life you told it to anybody at all was when you came here on June 12th, 1942, is that right? A. That is right. 1412

Mr. Geoghan: No questions on behalf of Indovino.

*Redirect examination by Mr. McGough*:

Q. How old are you? A. Twenty-six.

Q. In 1940, you were about twenty-three or so? A. Yes.

The Court: Gentlemen of the jury, we are about to take a luncheon recess. I admonish you not to discuss this case either among yourselves or with any other person, or permit any one to speak to you about this case, or discuss it in your presence. You must keep your minds open. Don't form or express any opinion or conclusion as to the guilt or innocence of the defendant on trial or either of them, or any of them, until the case is finally submitted to you for your consideration after a charge by the Court on the law. You may retire now and return at 2:15 p. m. 1413

1414 *Peter Shamin—For People—Direct*

AFTER RECESS. TRIAL RESUMED.

PETER SHAMIN, residing at 49 Avenue B, Manhattan, New York City, called as a witness in behalf of the People, being duly sworn by the Clerk, Mr. Jehle, testified as follows:

*Direct examination by Mr. McGough:*

Q. Your name is Peter Shamin? A. Yes, sir.

1415 Q. Peter, how old are you? A. I am eighteen and a half.

Q. You are eighteen and a half years old? A. Yes, sir.

Q. Do you know the defendant Morris Malinski? A. Yes, sir.

Q. How long do you know him? A. I know him for about two and a half to three years.

Q. Now some time in 1940 or 1941, were you working for a store on First Avenue in the County of New York? A. Yes, sir.

Q. And do you remember the name of the man

1416 who owned the store? A. Yes, sir.

Q. What was it? A. Max Rouch.

Q. Max Rouch? A. Yes, sir.

Q. Did you ever see the defendant Morris Malinski there in that store? A. Yes, sir.

Q. What was he doing at the place? A. He was working there.

Q. What kind of work was he doing? A. He was a salesman; stock clerk.

Q. Now do you recall the month of February 1941? A. Yes, sir.

Q. Were you working there on a part-time basis or whole-time basis? A. I was working

there on Saturdays. I went to school during the week.

Q. What school were you attending that time? A. I was attending the High School of Commerce.

Q. Now do you recall sometime about the middle of February 1941 having a conversation with Morris Malinski about an errand? A. Yes, sir.

Q. Will you tell us, please, if you recall what date it was and about what time of the day it 1418
was? A. It was about—it was in the afternoon close to four o'clock.

Q. Do you remember what day it was? A. No, sir, I don't remember the date.

Q. What day of the week? A. It was on a Saturday.

Q. Did he say something to you? A. Yes, sir.

Q. Tell the Court and jury what Morris Malinski said to you at that time and place.

Mr. Carabba: Now, if your Honor pleases, on behalf of the defendant Rudish, 1419
I object to it on the ground that whatever was said between the defendant Malinski and this witness is not binding on the defendant Rudish.

Mr. Geoghan: And the same in behalf of Indovino.

The Court: Well, I will decide in favor of the defendants. The objection of Mr. Geoghan is sustained. The objection of Mr. Carabba is sustained.

By Mr. McGough:

Q. Tell us what Malinski said to you at that time. A. Malinski first called me when I was in the street. I turned around and he was in the hallway.

Q. I cannot hear you. A. Malinski called me. He was in the doorway of the hall. I was on the street. I turned around and he said, "Pete, go get a bag of pieces in the hall".

1421 Q. I cannot hear you. A. "Pete, go and get the bag of pieces in the hall. They are between the napkin boxes", and he told me to put it into the toilet.

Mr. Solovei: I object to it on the ground it is highly improper.

The Court: Objection overruled.

Mr. Solovei: Exception.

By Mr. McGough:

Q. Now you mentioned a hallway? A. Yes.

1422 Q. Was that the hallway going to the place upstairs? A. No, sir.

Q. Tell us what doorway it was. A. That doorway is supposed to have been padlocked. The building was not used by any families or any tenants.

Q. How close was the hallway to the store where you were working that day? A. The hallway was the same building.

Q. Was there anything in that hallway while you were working there? A. Yes, sir.

Q. What was in it? A. We used to keep merchandise there.

Q. After he told you to go into the hallway and get the bag of pieces, that you would find between two napkin boxes, what did you do?

Mr. Solovei: I object to these questions. I do not recollect that being the testimony.

The Court: Did he say anything about, between the napkins? 1424

By Mr. McGough:

Q. Did you say a moment ago, "Get the bag of pieces between the napkin boxes"? A. Yes, sir.

Q. Is that what this defendant Malinski told you to do? A. Yes, sir.

Q. Did you do it? A. Yes, sir.

Q. Tell this Court and jury what you found between the napkin boxes in the hallway? A. I found a bag.

Q. And will you describe it, please, with reference to the size and the weight and the color of the bag that you say you found? A. The bag— 1425

Mr. Solovei: All over my objection, this testimony is going in, I assume, your Honor?

The Court: I have in mind the Zackowitz case.

Mr. McGough: I know the Zackowitz case. This is on the issue between the People and Malinski on the 15th of Feb-

ruary, and there is testimony, I submit, without making a detailed statement, showing what transpired before and after, between this particular individual and the defendant.

The Court: I permitted the other testimony given by Tippler or Tiplet because of the alleged conversation had between Spielfogel and the defendant Malinski, as related by him. Now have you shown that
1427 the subject matter of the inquiry here is the same as the one referred to by the Tippler?

Mr. McGough: That is the People's contention, that this testimony leads right in and dovetails with the witness Yellin. You may recall when Yellin testified, Judge, that he saw Malinski at about the hour of 8 p. m. on the 15th of February, 1941, with a bag, which he described here, and this testimony, I say is competent and it will tend, if I might be so bold as to
1428 state, to connect Malinski with that particular bag.

Mr. Solovei: In view of the statement of the District Attorney, I am going to make an application now to move for the declaration of a mistrial and the withdrawal of a juror, upon the ground that the statement is highly prejudicial, and not evidence, and in violation of the defendant's rights, the constitutional rights for a fair and impartial trial.

The Court: The motion denied. This is not evidence, Gentlemen of the jury, it

is conversation between the Court and the District Attorney. Nothing takes the place of evidence, and you men are all intelligent men of the community, and you appreciate that. Offers of proof by lawyers and District Attorneys do not take the place of proof. I am going to sustain the objection at this time. The occasion may arise when the same question may be asked later during the trial. That I do not know. That remains to be seen but 1430
at this time I will sustain the objection.

By Mr. McGough:

Q. Now Peter, what were your working hours there on Saturday at that time? A. I worked until ten o'clock at night.

Q. And did you take any time for supper, as a rule? A. Yes, sir.

Q. Did Morris Malinski leave at any time on a Saturday for his supper? A. Yes, sir.

Q. Now with respect to that particular date, when he asked you to do something in the hall, 1431
do you remember what time he went to supper?

Mr. Solovei: I object to the question.

The Court: Objection sustained as to form. I have stricken out all reference to something in the hall. I tell the jury to disregard it at this time.

By Mr. McGough:

Q. Can you tell this Court and jury, Shamin, what time Malinski went to supper that night?

1432

Mr. Solovei: I object.

The Court: Objection overruled.

Mr. Solovei: I object to it upon the ground that there is no date set as to what night he is talking about.

The Court: He said it was on Saturday in February.

Mr. Solovei: That is right.

The Court: When was it, the beginning of the month or the end of the month, or

1433 the middle of the month?

The Witness: It must have been about the beginning of the month because I remember the school term had just begun.

By Mr. McGough:

Q. Could it have been later?

Mr. Solovei: I object to the question. The witness testified, "It could have been", is speculative.

The Court: He may ask him if he de-

1434 sires to change his testimony.

Mr. Solovei: I except.

The Court: Proceed.

By Mr. McGough:

Q. I say, could it have been later than the beginning of February?

Mr. Solovei: I object to the question.

The Court: Objection sustained. Are you certain that it was the beginning of February?

The Witness: It could have been within those two weeks.

By Mr. McGough:

Q. What two weeks? A. The first two weeks of February.

Q. Do you know when Malinski quit at that particular store, what month? A. Yes, he quit about a month after that.

Q. What time? That would be March? A. Yes. 1436

Q. Do you know what day in March? A. No, sir.

Q. Well, with reference to the time that he quit, can you tell us how much time before the time he quit in March it was that he went out to supper on this particular night?

Mr. Solovei: I object to the question.
The Court: Objection overruled.
Mr. Solovei: Exception.

By Mr. McGough: 1437

Q. In other words, how much later after this particular night in question did Malinski quit, if you know?

Mr. Solovei: I object to the form of the question.
The Court: Objection overruled.
Mr. Solovei: Exception.
The Witness: About a month later.

1438 *Peter Shamin—For People—Direct*

By Mr. McGough:

Q. What time did he go to supper that night?

Mr. Solovei: I object to the question.

The Court: Objection overruled.

Mr. Solovei: Exception.

The Witness: He went to supper about seven o'clock.

1439 By Mr. McGough:

Q. And by the time that you went to supper, had he returned? A. No, sir.

Q. What time did you go to eat that night? A. About a quarter to eight.

Q. And what time did you return? A. About in forty-five minutes.

Q. That would be about 8:30? A. Yes, sir.

Q. And when you came back, was Malinski there? A. No, sir.

Q. Now did you see Malinski again that night at any time? A. No, sir.

1440 Q. After he went to supper? A. No, sir.

Q. Did you see him between the period of 8:30 and the time that the store closed that night? A. No, sir.

Q. I show you People's Exhibit B, marked for identification, and ask you if you ever saw that with the defendant Malinski?

Mr. Solovei: I object to the form of the question.

The Court: On what ground?

Mr. Solovei: On the ground it is leading.

The Court: Objection sustained.

By Mr. McGough:

Q. I hand you People's Exhibit B, and ask you to look at it. A. Yes.

Q. Did you ever see that before? A. I seen a hat like it.

Q. You saw a hat like that before? A. Yes, sir. 1442

Q. Where did you see it?

Mr. Solovei: I object to that.

The Court: Objection overruled.

Mr. Solovei: Exception.

The Witness: I seen it in the store.

By Mr. McGough:

Q. Who was present? A. Malinski, a boy known as Slip, and I.

Q. Did Malinski say anything about a hat like 1443 that at that time? A. Yes, sir.

Q. What did he say? A. He said he got it as a present.

Q. Did he say from whom he got it? A. No, sir.

Mr. McGough: Your witness.

The Court: I am going to strike out this witness' testimony with regard to everything that he has testified to other than the hat.

1444 Mr. McGough: I submit—

The Court: I am going to instruct the jury to disregard it. I am going to let the testimony with reference to the hat stand. Everything else is stricken out, and the jury is instructed to disregard it at this time, with regard to the testimony concerning the fact that he was in the store one night and Malinski did not come back. There is no definite date as to
1445 that. That is purely speculative. I strike that testimony out and tell the jury to disregard it as having no probative force whatsoever. With respect to him going into the hallway about some package, I will strike that out and instruct the jury to disregard that at this particular time.

Mr. Solovei: I now renew my application—

The Court: But the testimony with reference to the hat, I will permit that testimony to stand. That may be considered
1446 by the jury for whatever it is worth.

Mr. Solovei: I now renew my motion in view of this witness' testimony, for the withdrawal of a juror and the declaration of a mistrial, upon the ground that the testimony adduced by this witness is highly prejudicial and in violation of the defendant's rights.

The Court: Motion denied.

Mr. Solovei: Exception.

The Court: Proceed.

*Cross-examination by Mr. Solovei:*

Q. Before you said you saw a hat, is that right? A. That is right.

Q. Something like this hat that you see now? A. Yes, sir.

Q. It is nothing unusual for you to see a brown hat, is it? A. (No answer.)

Q. Is it? A. No, sir.

Q. Did Malinski speak to you about some Moe Penn hat? A. No. 1448

Q. Did you ever hear the word "Moe Penn" used before? A. No, sir.

Mr. Solovei: I would like to get the defendant's hat from the pen upstairs.

The Court: Yes. You may bring down the defendant's hat.

Mr. Carabba: May I ask your Honor, respectfully, that whatever testimony this witness has given on the stand, and that your Honor subsequently struck out, has no force or binding effect on my client, the defendant Rudish. 1449

The Court: Why, certainly, it has not.

Mr. Geoghan: That has already been asked as to Indovino.

Mr. Carabba: And also the testimony with reference to the hat.

The Court: Certainly.

Mr. Geoghan: And the whole testimony as to my client Indovino.

The Court: Certainly.

1450

By Mr. Solovei:

Q. While we are waiting for the hat; how long have you been working there now? A. I worked there that summer.

Q. Just that summer? A. Yes, sir.

Q. The summer of what? A. The summer of 1940.

Q. You worked there in the summer of 1940? A. Yes, sir.

1451

Q. How long did you work in the summer of 1940? A. I worked all summer.

Q. You mean every day? A. Yes, sir.

Q. And later on you worked Saturdays? A. Yes, sir.

Q. Now look at this hat and see if you ever saw that hat before.

The Court: Mark it for identification.

(Hat marked Defendants' Exhibit C for Identification.)

1452

The Witness: I seen a hat like that.

By Mr. Solovei:

Q. You saw Malinski have a hat like that, is that correct? A. Yes.

Q. And while he worked in the store where you were employed, in Rouch's store, is that correct? A. Yes, sir.

By the Court:

Q. He said he got it as a present? A. Yes, sir.

Q. That is what he said? A. Yes.

By Mr. Solovei:

Q. Is that right? A. Yes, sir.

Q. Now look inside of the hat and see if the name is in that hat—

Mr. McGough: That is objected to.

Q. —does not refresh your recollection as to what make of hat he told you he had?

1454

Mr. McGough: I object to it.

The Court: Objection sustained. There is no testimony here that Malinski ever told him anything as to the make he had.

Mr. Solovei: I just asked him about it before and he said he did not tell him that. Now I am asking him to refresh his memory.

By the Court:

Q. Did Malinski ever tell you the make of hat that he had at the time when he said he got the hat for a present? A. No, sir. 1455

By Mr. Solovei:

Q. Didn't he say something about a "Moe Penn" hat? A. No, sir.

Q. In any event, this hat that is marked Defendants' Exhibit C for identification, is something like the hat that you say you saw him wear, is that correct? A. Yes, sir.

Q. And you don't know just which Saturday it was that you claim he went out around 7 or

1456 *Virginia Goonan—For People—Direct*

8 o'clock, or around that time, 7 o'clock, and did not return until after you left? A. No, sir.

Mr. Solovei: That is all.

By Mr. McGough:

Q. As far as you know, he may have never come back? A. That is right.

Mr. McGough: That is all.

1457 Mr. Geoghan: No questions on behalf of Indovino.

Mr. Carabba: None on behalf of the defendant Rudish.

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VIRGINIA GOONAN, residing at 1327 Amsterdam Avenue, Manhattan, New York City, called as a witness in behalf of the People, being duly sworn by the Clerk, Mr. Jehle, testified as follows:

1458

*Direct examination by Mr. McGough:*

Q. How old are you? A. 23.

Q. Are you known as Jean? A. Yes.

Q. Do you know the defendant Morris Malinski? A. Yes.

Q. Under what name did you know him? A. Moish.

Q. Now in February 1941, were you his girl? A. Yes.

Q. Do you recall the night of February 15, 1941? A. Yes.

Q. Where were you living at that time? A. 231 East 10th Street.

Q. Manhattan? A. Yes, Manhattan.

Q. And what was the name of the people you were living with? A. Di Pisa.

Q. Man and wife? A. Yes.

Q. Were they related to Malinski, if you know? A. Shirley was his sister—

Q. Take your time and talk up. A. Moish and Shirley were brothers and sisters.

Q. And who is Shirley, please? A. Morris' 1460
sister.

Q. And who is she, please, at the house; was she married to anybody? A. She was married to Pete Di Pisa.

Q. Her name was Shirley Di Pisa? A. Yes, sir.

Q. And you were living there at that time? A. Yes, sir.

Q. How long had you been there that night? A. I was staying there three weeks.

Q. A couple of weeks? A. Yes.

Q. Now did something happen that night that made an impression upon your mind? A. (No 1461
answer.)

Q. Did you hear me? A. Yes.

Mr. McGough: Will you repeat the question, please?

(The question was repeated by the stenographer.)

Mr. Solovei: I object to the form of the question.

The Court: Objection overruled.

Mr. Solovei: Exception.

1462

The Court: Say "Yes" or "No".
The Witness: Yes.

By Mr. McGough:

Q. Did you see Morris Malinski there at that house that night? A. Yes.

Q. What time was it? A. About 2:30 or 3 o'clock.

Q. A. M. or P. M.? A. A. M.

1463

Q. Do you recall what night of the week it was? A. On a Saturday.

Q. Now what was the first thing that attracted your attention that night? A. The bang on the door.

By the Court:

Q. Was that Saturday night or early Sunday morning? A. Early Sunday morning.

Q. Early Sunday morning? A. Yes.

By Mr. McGough:

1464

Q. And did the banging on the door wake you up? A. Yes.

Q. Did you see anybody come to the door? A. Yes.

Q. Who? A. Shirley.

Q. Would that be Morris Malinski's sister? A. Morris' sister.

Q. And where was Peter Di Pisa at the time? A. He was in the bedroom.

Q. How many rooms are in that flat or apartment? A. There is three.

1465

Q. And the door coming into the hall, what room does that enter into? A. The kitchen.

Q. Did you get up from your bed? A. Yes.

Q. What did you do? A. I went to the kitchen.

Q. Did you hear anything that was said between Morris Malinski and his sister Shirley? A. Yes.

Q. What did you hear?

Mr. Carabba: If your Honor pleases, at this time may I respectfully interrupt and address myself to the Court?

1466

The Court: Yes.

Mr. Carabba: I ask your Honor to instruct the jury that whatever was said by this witness and the defendant Malinski's sister is not binding upon the defendant Rudish.

Mr. Geoghan: The same on behalf of the defendant Indovino.

The Court: The jury is so instructed. The same instruction is given with reference to Indovino. This testimony is received only with reference to Malinski.

1467

By Mr. McGough:

Q. Now tell us what you heard, please. A. He banged at the door and Shirley got up and oponed the door and he asked her could he stay there for the night. She said there was no room. He says, "We just shot a cop". So Shirley's husband got up and pushed him out of the door, pushed him out into the hall. He said that he didn't want him in the house; he didn't want no trouble.

1468 Q. Now did you hear Morris Malinski say anything else besides staying there that night and shooting a cop? A. I heard him say, "We each got $200 apiece".

Q. What did you do when you heard that? A. I got up off the couch and I went to the kitchen and I says, "What did you do; shoot a cop"?

Q. Who did you say that to? A. Morris.

Q. Malinski? A. That is right.

Q. And did he say anything? A. He said,
1469 "Get back in bed before I give you the same thing I gave the cop".

Q. He said that to you? A. That is right.

Q. Do you know this defendant Indovino? A. Yes.

Q. Do you know him under any other name? A. Tiger.

Q. How many times have you met Tiger Indovino? A. Six times.

Q. And how did you first come to meet him? A. Through Morris.

Q. Morris Malinski? A. Morris Malinski.

Q. And where were you at the time you made
1470 Tiger Indovino with Morris? A. In Max's—

Mr. Geoghan: I object to it on the ground it has no connection with this alleged crime.

Mr. McGough: I have a right to show the acquaintanceship.

The Court: He has a right to show acquaintanceship between them. Of course I do not know when the acquaintanceship started, the day or time when it was made, but he has the right to show the acquain-

tance. We will see when the alleged acquaintance was made, if it can be ascertained.

Mr. Geoghan: Does your Honor overrule my objection?

The Court: Your objection is overruled, Mr. Geoghan.

Mr. Geoghan: Exception.

The Court: I recall that you opened to the jury and you said that they did not even know each other. 1472

Mr. Geoghan: I said that as to Rudish.

The Court: As to Rudish?

Mr. Geoghan: Yes.

The Court: I beg your pardon, Mr. Geoghan. Your objection is overruled, though.

Mr. Geoghan: Exception.

The Court: Put the question to her again.

By Mr. McGough:

Q. Where did you meet Indovino and Morris? 1473
A. In Max's 5 and 10 cent store.

Q. Where? A. 14th Street and First Avenue.

Q. How far from the store were you living at that time? A. Right across the street.

Q. Can you fix the time that it was that you met Indovino; what month, what year? A. It was in November or September.

Q. November what? A. (No answer.)

Q. What year? A. 1940.

Q. Was that the first time? A. Yes.

Q. And can you tell us the month that it was

1474 the last time that you saw him? You say you saw him about six times? A. Yes.

Q. When was the last time you saw Indovino and Malinski?

The Court: You mean, together?

By Mr. McGough:

Q. Together. A. (No answer.)

1475 Q. About when, approximately? A. I think it was the first two weeks in January 1941.

Q. Was anything said when you first met Indovino?

Mr. Geoghan: I object to the form of the question.

Mr. McGough: Withdrawn.

The Court: Proceed.

By Mr. McGough:

1476 Q. You say you met Tiger through Malinski? A. That is right.

Q. Did Malinski say anything to you at that time? A. He says, "I want you to meet a friend of mine. This is Tiger."

Q. Did Tiger say anything to you? A. He just said, "How-do-you-do".

Mr. McGough: All right; your witness.

*Cross-examination by Mr. Solovei:*

Q. You lived with Slip for a while, didn't you, Virginia? A. What?

Q. Didn't you live with Slip for a while in one apartment? A. No.

Q. What? A. No.

Q. How friendly are you with Slip? A. I know him through Morris.

Q. You are very friendly with him, aren't you? A. Not very friendly.

Q. Didn't you live in one apartment with Slip? A. No.

Q. Don't shake your head, please; just answer. A. No. 1478

Q. Did you go out with him often? A. No.

Q. Never went out with Slip? A. I went out with Morris.

Q. How about Slip? A. No.

Q. You liked Slip, didn't you? A. No.

Q. Did you meet Slip at the Citadel Club? A. Where?

Q. At the Citadel Club? A. (No answer.)

Q. Some club on the East Side? Did you meet him there? A. I went up to one club one night with Morris.

Q. Was Slip there? A. I think Slip was up there. 1479

Q. Did you meet Yellin, Dave Yellin, Slip's friend? A. No, never heard of him.

Q. And when did you first meet Morris? A. That was in the summer.

Q. 19—what? A. 1940.

Q. 1940? A. Yes.

Q. Where did you meet him? A. In the 5 and 10, in Marks' 5 and 10.

Q. And then did you go out with him? A. Yes.

Q. How often did you go out with him? A. Once or twice a week.

Q. And did you go out to some apartments with him? A. Yes.

Q. Did you live together? A. No.

Q. What? A. No.

Q. Did you ever stay at these apartments overnight with him? A. No.

Q. What apartments did you go with him? A. Well, I was with my sister. Then from there,

1481 I went to his sister's.

Q. Did you ever talk to Slip about this case? A. No.

Q. Did you ever talk to Yellin about this case? A. No, I don't know him.

Q. You don't know Yellin? A. No.

Q. Do you know Red the Tippler? A. No.

Q. Do you know Beitler? A. No.

Q. When was it that you first met Slip in 1940? Was it in the summer? A. That was in the summer.

Q. And you went out with him for some time, on and off? A. I did not go out with Slip.

1482

Q. I mean Malinski. A. With Morris; that is right.

Q. You went out with him on and off? A. Yes.

Q. A couple of times a week? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. When was this that you were over at Miss Shirley Di Pisa's house? A. I was there in January.

Q. And you stayed there for about a week or two? A. Three weeks.

Q. Stayed there for three weeks in January? A. Yes.

Q. And that was the last time you were there? A. That is right. That was the last time I saw Morris and Slip.

Q. That was in the month of January 1941, is that right? A. That is right.

Q. And after that, you never saw him again? A. That is right.

Q. Is that correct? A. Yes.

Q. Now of course you know that New Year's comes around January 1941, is that right? A. That is right. 1484

Q. And it was for about three weeks in the month of January 1941 that you stood at Mrs. Di Pisa's house; what is her name, Malinski's sister's house? A. That is right.

Q. And you did not see him after that at all?

The Court: There are several questions in there. We will take them one at a time.

Mr. Solovei: All right.

By the Court:

Q. When was it that this is supposed to have happened? 1485

Mr. Solovei: I object to the question.

The Court: Your objection is overruled.

Mr. Solovei: I ask that I be permitted to ask the witness—

The Court: You shall be permitted to, but I want to understand myself what the witness claims.

Mr. Solovei: Won't you let me bring it out?

1486 *Virginia Goonan—For People—Cross*

The Court: I will permit you to do it. When did you say that this episode occurred at night, including the banging at the door?

Mr. Solovei: I object to the question.

The Court: Your objection is overruled.

Mr. Solovei: I except.

By the Court:

1487 Q. When was it? Was it in January or in February or in March or in April? A. That was January 15th.

Q. Was it January 15th? A. That is right.

The Court: All right.

Mr. Solovei: I move to strike out all her testimony.

By the Court:

Q. Are you certain it was on January 15th? Are you certain of the month? A. Yes.

1488 Q. What? A. It should be January.

Q. It was January; you are sure of the month?

Mr. Solovei: Your Honor, I object to it upon the ground that the witness has answered four times and she told your Honor—

The Court: The record does not show the conduct of the witness on the witness-stand. The record does not disclose that.

Mr. Solovei: Her conduct certainly is not induced by any—

1489

The Court: I do not want to make any comment about it unless counsel desires to put me on the record as to what I am observing, because it is for the jury to observe, too; but let us not go any further into that.

Mr. Solovei: Exception.

By the Court:

1490

Q. When was it you want to live at the sister's house; in January? A. That is right.

Q. What part of January did you go to live at the sister's house? A. That was before the end of December; toward the end of December, and I stood there for three weeks, and I got out the following Monday.

Mr. Solovei: May I have the answer read?

The Court: Read it.

(The last answer was repeated to Mr. Solovei.)

1491

Mr. Solovei: I now renew my motion.

Mr. McGough: Are you finished cross-examining?

Mr. Solovei: I am making my motion to the Court.

The Court: I will reserve decision on the motion.

Mr. Geoghan: The same motion on behalf of Indovino.

The Court: That is entirely unnecessary because this testimony in nowise affects either Indovino or Rudish. I am

1492 *Virginia Goonan—For People—Redirect*

happy to make these continuous statements in order to emphasize to the jury the rule of law, that where evidence is received against one defendant, it has no bearing on the other defendants, and I will keep on emphasizing that throughout the trial, so that there should not be any possible question in the jury's mind as to that.

Mr. Carabba: That is satisfactory.

1493 *Redirect examination by Mr. McGough:*

Q. Did you have a baby that year? A. The baby was born 1941.

Q. Can you hear me? A. Yes.

Q. Listen and pay attention. A. Yes.

Q. Did you have a baby in 1941? A. Yes.

Q. What day was the baby born? A. May 10th.

Q. Was there anything unusual about that baby being born on that day?

1494 Mr. Solovei: I object to it.

Mr. McGough: I have a right to show dates and I have a right to show this.

The Court: You have a right to rehabilitate the witness.

Mr. McGough: Certainly, and I intend to do it.

The Court: If you can.

Mr. McGough: With your Honor's permission.

The Court: But I don't know what this witness is going to say, and I hope it is

not going to be anything to cause any grounds for a mistrial.

Mr. McGough: I am jealous of the rules. I know my rights.

The Court: Proceed.

By Mr. McGough:

Q. Now I ask you about the baby. By the way, how old is this baby now? A. Two years and one month.

Q. Was it a normal baby? A. A premature baby. 1496

Mr. Solovei: I object to this line of testimony.

The Court: Objection overruled.

Mr. Solovei: Exception.

By Mr. McGough:

Q. How much premature? A. A seven-month baby.

Q. That baby was born on May 10, 1941? A. Yes. 1497

Q. A seven-month baby? A. That is right.

Q. Can you figure how far back from May 10th it was that you had a conversation with Malinski about that baby?

Mr. Solovei: I object to it.

By Mr. McGough:

Q. Did you understand me? A. I was about three months—

Mr. Scholvey: Will your Honor rule on my objection?

By Mr. Mcgonagle:

Q. If you don't understand me, pray me read it back to you.

Mr. Scholvey: I made an objection and I would like to get a ruling.

The Court: Do not give us the suppression of the conversation. You may state if that refreshes your recollection as to the date when you had the conversation.

The objection is overruled.

Mr. Scholvey: Exception.

Mr. Mcgonagle: Repeat the question.

(The question was reported to the witness by the stenographer.)

By Mr. Mcgonagle:

Q. How many months before? A. Well I was 1200 three and a half months pregnant.

Q. At what time? A. I don't get what you mean.

Q. You were three and a half months pregnant what date in 1941?

Mr. Scholvey: I object to it. She never said anything about 1941.

The Court: That is right.

By the Court:

Q. You say the paper was torn in May? A. 1941.

Q. *When were you, three and a half months pregnant, in what month and in what year were you three and a half months pregnant?* A. In June was pregnant in October.

Q. *Not when you were pregnant in October. I mean when you were three and a half months pregnant?* A. January or February.

The Court: Proceed.

1203

By Mr. McGonagh:

Q. January or February? A. Yes.

Q. Is that right? A. Yes.

Q. *Well, now, can you tell us when it was, on what Saturday and what month, please, your post recollection, that it was that Malinski came to Shirley's house?*

Mr. Solovei: I object to the question.

The Court: Objection overruled.

Mr. Solovei: Exception.

1203

By Mr. McGonagh:

Q. Do you understand that? A. That was on a Saturday.

Q. Can you tell us, *Virginia, what Saturday it was that this happened up at Shirley Di Pisa's house?*

Mr. Solovei: I object to that.

By Mr. McGonagh:

Q. *What particular month, and if you know what particular day of the week?* A. That was—

MR. SOLOVEY: I object to it upon the ground that she has answered my question and your Honor's questions at least four or five times.

THE COURT: Objection overruled.

MR. SOLOVEY: Exception.

THE WITNESS: That was in the month of January. It was on a Saturday.

BY MR. MCGONAGH:

1202 Q. Are you sure it was January?

THE COURT: May the record show that the witness, Miss Ara Mooring silently, and that Mr. Rogers are Mooring as well, and that a house is taking place of consideration lawful. Now don't be nervous, Miss, and just think of the question and give us an answer.

Q. Do you want to have the question read again? Do you know what the question is? A. No.

1203 MR. MCGONAGH: Will your Honor have the reporter read it to her?

THE COURT: Read it to her, please.

(The question was repeated by the stenographer.)

THE WITNESS: I know it was on a Saturday, late that Saturday morning, at 5:30 and 3 a. m. in the morning.

By Mr. McGonagh:

Q. Was it a warm night or cold night? A. It was a cold night.

Q. How do you remember that?

Mr. Soloyei: I object to the question.
The Court: Objection overruled.
Mr. Soloyei: Exception.
The Witness: I was sleeping on the couch and I asked Shirley for an extra blanket.
Mr. Soloyei: I object to that.
The Court: Objection overruled.
Mr. Soloyei: Exception.

1208

By Mr. McGonagh:

Q. Did you get an extra blanket? A. Yes.

Q. Now with that in mind, can you tell us what month it was? A. February 12th.

Q. Are you sure of that?

Mr. Soloyei: Will your Honor note the time that it took this witness, at least over five minutes, to make the answer to that question.

Mr. McGonagh: My recollection is that it was not five minutes.

The Court: It is not five minutes, but I will say for the record that the witness has been moving per lips, and the Court observed her flagging one hand with the fingers, as it continue something. That is clear. I don't know whether counsel

observed it, but I observed it here as I
said beside her.

Mr. Solvent: I renew the motion to
strike out the testimony.

The Court: No, that is for the jury.

The motion is denied.

Mr. Solvent: Exception.

The Court: The jury will base on her
credibility as it will on the testimony and
credibility of each and every witness. The
Court is not bressing on credibility. That
is the jury's function.

1211

Accuse-examination by Mr. Solvent:

Q. Miss Coonan, you said that you were brek-
fast in October 1940, is that right? A. That is
right.

Q. And it was about three months or three
and a half months that this occurrence the you
refute, the panking at the door and something
peppering: is that correct? A. Yes.

Q. And it was about three and a half months
that you were pregnant, is that right? A. Three
and a half to four months.

1213

Q. Is that right? A. Yes.

Q. The judge observed you trying to count
with your fingers. Were you moving your
fingers to try to count the months? A. Yes.

Q. Is that right? A. Yes, I was thinking of it.

Q. October, November, December, is that cor-
rect, would be three months, is that right? A.
Yes.

Q. And January would be about four months,
is that right? A. Yes. It was not the beginning
of October.

Q. *Well*? A. It *was* almost the end of October when I *was* there.

Q. It *was* towards the end of October? A. *Yes.*

Q. So it would be around January or towards the end of January that you were over at Shipley's house, is that right? A. That is right.

Q. Is that right? A. Yes.

The Court: You mean four months after the end of October is January? Is that what you contend?

1214

*Mr. Solovoi:* I say October, November, December and January.

The Court: The end of November would be one month, wouldn't it?

*Mr. Solovoi:* Yes.

The Court: The end of December would be two months. The end of January would be three months; and three and a half months would be some time in February, and four months would be the end of February. Am I correct or incorrect? But you ask the witness.

1215

*Mr. Solovoi:* Let me see it. I can straighten out.

The Court: Proceed.

By Mr. Solovoi:

Q. You said that you went to live at Shipley's house sometime in December, didn't you say that? A. Yes, sir.

Q. And you stayed there for about three weeks? A. Yes, sir.

Q. Am I right? A. Yes, sir.

Q. So that you left Shipley's house towards

the end of January of 1941, is that right? A. Yes.

Q. And you did not see Malinski after that, is that right? A. That is right.

Q. Now you are sure about that? A. Yes.

Q. You cannot be mistaken about it? A. No.

Q. And the reason why you are sure about it is because it was after Christmas or shortly after Christmas that you went over to Shirley's house to stay with her? A. Yes.

1217 Q. Is that right? A. Yes.

Q. And you only remained there for three weeks? A. Yes.

Q. So you stayed there until about the middle of February of 1941, is that right? A. I got out on the following Monday.

Q. What? A. I got out on the following Monday.

Q. It was in January 1941 sometime, is that right? A. Yes—

Q. Is it right?

MR. MCGONAGH: Wait a minute; let her answer.

1218 THE COURT: Please don't speak at the witness.

MR. SOLOVEY: I move!

THE COURT: You have been spoken at the witness. Please do not do that.

BY MR. SOLOVEY:

Q. You understand my question? A. I think I got out in February.

Q. Got out when? A. February.

Mr. Solovei: Will you stop laughing and snickering?

Mr. McConagh: Gee, I can't help it.

Mr. Solovei: There is a man's life at stake.

Mr. McConagh: I object to those remarks and I am going to ask Your Honor to have counsel address back to the people. He is learning very fast and pool girl is not even given a chance to answer.

1250

Mr. Solovei: It has not come to the time yet that you are training the courtroom.

Mr. McConagh: I did not want to give that impression. I do not think anybody has it outside of mine. I am going to ask Your Honor to have him stand back at his own counsel table. Can we have a glass of water for the witness, too?

Mr. Solovei: Do you want a glass of water?

1251

The Court: Well, now, Mr. Solovei, we have gotten along tremendously in this trial. Everybody has been so nice and so peaceable. I will let Mr. Solovei stand where he is. I will not order him to retreat but I am going to ask him not to shout at the witness.

Mr. Solovei: And I will try to do that.

The Court: I know you do not do it intentionally.

Mr. Solovei: Of course not: I will do that.

The Court: But please do not shout

at the witness. It tends to continue per-
sonal traffic.

By Mr. Sobovei:

Q. Now, Miss Goodman, I asked you before you went to Shirley's house, Mr. Imeki's sister's house, around Christmas of 1940, and you said yes, is that right? A. Yes.

Q. Will you please listen to me very carefully so that we can understand each other and you can do not get confused. Will you do that? A. Yes.

1253

Q. And you signed at her house, Shirley's house, for about three weeks, isn't that right? A. I was there longer than that.

Q. Now you say you were there longer than that? A. That is right, because I was there Exhibit 1254 Exhibit Mine? A. Yes.

Q. Why do you say you were there February 1941?

Exhibit 1254? *Who* told you something about February

Exhibit Mine? A. Yes.

The Court: I am going to permit counsel to go into this fully because the witness is apparently trying two different dates. He may go into that.

By Mr. Sobovei:

Q. *Who* told you that? A. Yes.

Q. *Who* told you about something on February

Exhibit A. Yes.

Q. Didn't somebody tell to you as to some-

time was when Alottis Alminski came up
thing that happened on February 12th? A. It
Q. Didn't some detectives talk to you? A. No.
Q. Why? A. No.
Q. No detectives spoke to you? A. No.
Q. You never spoke to any detectives? A. I never spoke to no detectives up until two detectives come up where I worked and picked me up.
Q. When? A. Two weeks ago.
Q. Was that the first time you ever spoke to him?

1253

Mr. McGonkle: Wait a minute; she did say she spoke to him.

The Court: She said they came up there and picked her up.

By Mr. Soloveri:

Q. Did you talk to them when they picked you up? A. No.
Q. Where did they take you? A. Took me to the D. A.
Q. What D. A.? A. Mr. McGonkle.

1254

Q. And in there you spoke to Mr. McGonkle, didn't you? A. And Mr. Van Ness.
Q. What? A. Mr. Van Ness.
Q. This man here (indicating)? A. Yes.
Q. And before you spoke to them, did you talk to the detectives? A. No.
Q. You never had any conversation with them at all? A. No.
Q. They never said anything to you? A. No.
Q. No detectives at all? A. Well, the first time—

Q. Never said anything to you at all? A. That is the first time I saw them saw when they came up where I worked.

Q. Who saw the first one that told you something about Esperanza Ichh? A. Well, that is when Morris come up, Esperanza Ichh.

Q. Who told you about Esperanza Ichh? Did Mr. McGonagh tell you about Esperanza Ichh? A. Well, he told me—he told me he wanted to know it I really know what I saw up there to his office.

Q. Did he tell you about Esperanza Ichh, he or a cop spot.

Mr. Van Nesse? A. They told me that there saw a cop spot.

Q. They told you a cop saw spot on a certain date, is that right? A. That is right.

Q. And do you now remember where it saw Esperanza Ichh that they told you? A. Yes.

Q. And that is why you now change your statement from Alameda to Esperanza Ichh because you were told by Mr. McGonagh and Mr. Van Nesse— A. No.

Q. —that it saw Esperanza Ichh that it pen- 1230
ened, isn't that so?

Mr. McGonagh: That is objected to.

The Court: She says "No".

The Witness: I told you I saw four months pregnant when it was happened.

By Mr. Solovey:

Q. What? A. I saw four months pregnant when it did happen.

By the Court:

Q. In other words, you fix the date when this rapping on the door happened by the fact that you were about that middle Pregnant is that time? A. Yes.

By Mr. Solovei:

Q. Were you ever married? A. No.

Q. Do you remember what I asked you before when you left Malinski's house and you said Januarty 15th, do you remember that? A. Yes.

Q. And you remember when I asked you when you got there, had you said something around—I mean his sister's or mean Malinski's house—I mean his sister's house, do you understand that? A. Yes, sir.

Q. A little while ago I asked you when was it you arrived at Mrs. Di Pisa's house, Malinski's sister, and had you said something around Christmas or before? Do you remember that? A. Yes, it was a couple of days before New Year's or was a couple of days before New Year's.

Q. A couple of days before New Year's or was it make it almost around Christmas? A. Yes. 1233

Q. Was it before Christmas? A. Yes—no, I think it was a day after Christmas.

Q. A day after Christmas? A. Yes, because Christmas I was down at my sister's.

Q. Now when I asked you if you got there around Christmastime of 1910, to Mr. Di Pisa's house, that was the truth, wasn't it? A. Yes.

Q. When you said yes? A. Yes.

Q. And when you said you only stayed there for about three weeks and left around January 12, 1911, that was so, isn't that so? A. No, I made a mistake then.

Q. You made a mistake then? A. Yes.

Q. Did the District Attorney refresh your recollection because of the fact that he told you—

A. No.

Q. —that happened on the 12th? A. Now, I am positive because I *was* just months previous.

Q. Did you ever tell Spitzlogel about it?

A. No.

Q. Before you came to the District Attorney's office to talk to him about this case, did you ever tell anybody in the *world* about *what* you just testified to here? A. I didn't know anything about it, no.

1232

Q. You didn't know a thing about anything, did you? A. *Well*, I knew *what* happened that night but I didn't see nothing.

Q. A minute ago you said you didn't know anything at all about it? *What* did you mean by that? A. I mean I knew about the shooting but I didn't see anything.

Q. When did you know about the shooting? A. *When* he came down and told his sister.

Q. When *was* that? A. February 12th.

Q. Who told you it *was* February 12th?

1230

Mr. McComb: That is objected to as already asked and answered.

The Court: Objection sustained.

Mr. Solovei: Exception.

The *Witness*: It *was* a cold night that night—

By Mr. Solovei:

Q. *Well*, all Expenses are cold nights, aren't

they? A. And he promised to take me to the show that Saturday but it was that Saturday he might come at all.

Q. That Saturday he promised you to take you to the show? A. Yes.

Q. Did you pay to go to a show before? A. Yes.

Q. You did go to shows before? A. Yes.

Q. And when did you see him that Saturday?

What time was it that you was him on Saturday? A. Did you see him on Saturday in the afternoon? A. No, when he come back and he passed on the 1238
road, that was the only time I was him.

Q. When did you see him before that Saturday? A. Four days before that.

Q. What? A. A couple of days before that.

Q. What day of the week was it that you was him before Saturday? A. It was in the middle of the week.

Q. The middle of the week of what month? A. A week before this February.

Q. What month was it? A. February.

Q. And what day was it that you met him or you was him? A. I don't remember. 1233

Q. What? A. I don't remember the day but it was during the middle of the week.

Q. Was it in the middle of the week? A. That is right: I think it was Wednesday or Thursday.

Q. On Monday or Tuesday? A. Wednesday or Thursday.

Q. Where did you see him? A. Down the store.

Q. Well, now, can you tell us what day of the

month it was that you saw him before this day that you are talking about? A. February.

Q. What month was it? A. February.

Q. What day of the month? A. The day before it happened.

Q. The day before what happened? A. Before they shot the cop.

Q. The day before they shot a cop, you saw him? A. Yes.

Q. You just told us a little while ago you only
1541 saw him a couple of days or a week before that, isn't that so? A. I didn't say a week before; I said a couple of days.

Q. How many days did you say? A. I said a couple of days.

Q. A couple of days? A. I said either Tuesday of Wednesday.

Q. Tuesday or Wednesday? A. Yes, sir.

Q. And now you say that you saw him a day before this happened, is that right? A. That is right.

Q. And that would make it Tuesday or
1542 Wednesday, is that right? A. No.

Q. Don't shake your head. A. No.

Q. Didn't you just say you saw him Tuesday or Wednesday? Didn't you just say that? A. I saw him Tuesday or Wednesday.

Q. And didn't you also just say that you saw him a day before it happened? Didn't you just say that? A. I must have made a mistake.

Q. You made another mistake? A. Yes.

Q. Is that another mistake? A. (No answer.)

Q. What?

The Court: I think we will take a recess now for a few minutes.

Mr. Solovei: Will you keep this witness up here?

The Court: Yes, I will keep her up here. Gentlemen of the jury, do not discuss the case among yourselves. Keep your minds open.

(A short recess was declared after which the trial was resumed.) 1544

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VIRGINIA GOONAN, resumed.

*Cross-examination by Mr. Solovei (continued):*

Q. You told us I think in the last question I asked you there just before that, that the time you saw him before this day in question was on a Tuesday or Wednesday; is that right? A. Yes. 1545

Q. Is that right? A. Yes.

Q. Now won't you— A. I said that but it was a mistake. I didn't see him then.

Q. You made a mistake? A. Yes, sir.

Q. And you corrected it later on and said it was Friday, is that right? A. It was on Friday.

Q. Was it on Friday? A. Yes.

Q. Do you know what day of the month it was? A. The 14th.

Q. The 14th of what? A. February.

Q. Now did you think it was the 14th, Miss? A. Yes.

Q. Now you said in answer to the Judge's question and in answer to the District Attorney's question that you were between three and a half or four months gone, I mean pregnant, is that right? A. That is right.

Q. It could not be over four months, could it? A. That I would not know.

Q. What? A. That I wouldn't know if I was over four months.

Q. You wouldn't know? A. I know I was in
1547 the fourth month.

Q. You are just guessing at it, is that right? A. That is right.

Q. And you told me that it was right after Christmas or the day after Christmas that you came to Mrs. Di Pisa's house, is that right now? A. Yes, that is right.

Q. And you know that because on Christmas Day you were at your sister's house, is that correct? A. That is right.

Q. So that you were at Mrs. Di Pisa's house around December 25th or December 26th, is that fair? A. Yes.
1548

Q. What? A. Yes.

Q. And you did not stay at Mrs. Di Pisa's house longer than three weeks, is that right? A. I stood there longer than that.

Q. Well, how much longer did you stay? A. Well, I was there up until the 16th of February.

Q. The 16th of February? A. That is right.

Q. You remember telling us that you were there about three or four weeks?

The Court: We have been over that,

haven't we? Would you like to go over it again?

Mr. Solovei: Yes.

The Court: You may.

Q. Were you mistaken about that? A. Yes, I was thinking of my sister's house.

Q. What? A. I was thinking of my sister's house. I was with her for three weeks.

Q. You were thinking of your sister? A. Wait a while—that is right.

1550

Q. When did you go to your sister's house? A. I was staying there before I went to Di Pisa's house.

Q. When did you go back to your sister's? A. I did not go back to my sister's.

Q. Where did you go? A. 1491 Amsterdam Avenue.

Q. When did you start in living at 1491 Amsterdam Avenue? A. Right after I left—when I left on the 16th.

Q. Did you have an apartment there? A. That is right.

1551

Q. Did you rent an apartment there? A. It did not belong to me. It belonged to Mr. Goonan.

Q. Mr. Goonan? A. That is right.

Q. Who is Mr. Goonan? A. Do I have to answer that? That is the baby's father.

Q. Did Mr. Goonan live there? A. That is right.

Q. Does Mr. Goonan live there? A. That is right.

Q. He still lives there? A. He is still there.

Q. Was that the first time you ever lived at this Amsterdam Avenue address? A. Yes.

Q. You still live there? A. Not the same house. I have my own apartment now.

Q. Well, will you tell me where you lived on February 15th of 1941? A. I first was up in Vernon Boulevard, Long Island City.

Q. When were you at Vernon Boulevard? A. That is right. That is the first time Mr. Goonan had his apartment there. From there we moved to Amsterdam Avenue.

Q. When were you at Vernon Boulevard? A.
1553 February.

Q. What address? Can you give us the street number, Miss? A. It is Vernon Avenue between 4th and 5th—I just don't remember the address.

Q. Is that Long Island City? A. That is right.

Q. It is Long Island City? A. Yes.

Q. And the apartment was in the name of Goonan? A. That is right.

Q. What is his first name? A. That was not his apartment. That was a furnished room. Mr. William Goonan.

Q. What? A. Mr. William Goonan.

1554 Q. Mr. William? A. That is right.

Q. Goonan? A. Yes, that is right.

Q. That was a furnished room house? A. That is right.

Q. Do you know what day of the month you went there? A. February.

Q. What day of the month? A. The 16th.

Q. You went there February 16th? A. 16th or 17th.

Q. What? A. Either the 16th or 17th; I just can't furnish the date.

Q. Do you know what year? A. 1941.

Q. And this furnished room. was it on the first,

second or third floor? What floor was it? A. One flight up.

Q. Front or rear? A. Front.

The Court: How much longer do you expect to take, Mr. Solovei? I just want to govern myself for the rest of the afternoon.

Mr. Solovei: I will be through very shortly.

The Court: About how long? 1556

Mr. Solovei: I don't think I will be more than five or six or seven minutes.

The Court: All right, proceed.

By Mr. Solovei:

Q. And this 1327 Amsterdam Avenue, is that where you live now? A. Yes.

Q. And how long did you live at this address at Vernon Boulevard between 4th and 5th Avenue? A. We were there a couple of months. From there we went to 1491 Amsterdam.

Q. And what is your name, Miss? A. Well, I 1557
am going under the name of Goonan.

Q. What is your true name? A. Natale.

Q. Natale? A. Yes.

Q. What is your sister's name? A. Rachel.

Q. Rachel? A. That is right.

Q. Rachel what? A. Jorr.

Q. Jorr? A. Yes.

Q. And where does she live, Miss? A. I would not know.

Q. You don't know? A. That is right.

Q. Where did she live in 1940? A. She lives up in 14th Street and First Avenue.

Q. Where did she live in 1941? A. That I would not know, in 1941. She still lives up on 14th Street and First Avenue.

Q. Brooklyn? A. No, New York, on the East Side.

Q. Do you know the number of the street? A. 14th Street and First Avenue.

Q. That is a big block. A. It is right across the street from where Morris used to work. I just don't remember the number.

1559 Q. Across the street from where he worked? A. That is right.

Q. He did not work on 14th Street? A. Yes, he did.

Q. Wasn't it 10th Street? A. 14th Street.

Q. On 14th Street? A. That is where I met him; that is right.

Q. You don't know the house number? A. No.

Q. You are peeved at Morris, aren't you, because he did not marry you? A. No.

Q. What? A. No.

Q. Aren't you sore at him for that reason? A. No.

1560

Q. You are not sore? A. I mean, I left.

Q. You left what? A. I left his sister's house when I found out what he done.

By the Court:

Q. You what? A. And when he come down and he said he shot a cop.

By Mr. Solovei:

Q. Who told you to say that? Did somebody tell you? A. Nobody.

Q. Some of the cops told you to say it? A. Nobody did. I did.

Q. And you never told a soul in the world other than Mr. McGough about this case, is that right? A. That is right.

Q. Nobody had your name and address or where you lived or anything at all, is that right? A. As far as I know, no.

Q. Spielfogel did not have it? A. No.

Q. And Yellin did not have it? A. I don't know him. 1562

Q. You don't know him? A. No.

Q. You never gave your name or your address to anybody at all and you were living under the name of Goonan, is that right? A. That is right.

Q. Where did they come to talk to you, the police officers? Where did they get you from? A. They picked me up off my job.

Q. Where? A. 34th and Fifth; F. W. Woolworth & Company.

Q. And did you ever tell anybody that you were Mrs. Goonan or your name was Goonan and that you knew about this case and that you worked in Woolworth's? A. No, those two detectives they come up and pick me up off my job. 1563

Q. You don't know how they found out anything at all about you, is that it? A. That is right. I didn't know until they came up after me.

Q. What? A. I didn't know anything until they come up after me.

Q. And that is the first time they did come up after you was how long ago, did you say? A. Two weeks today.

Q. What month was it? A. June; two weeks from today.

Q. Why did it take you so long to answer that question? A. I told you that before; they picked me two weeks ago today and you are repeating the question.

Q. And it was in the month of June, is that it? A. That is right.

By the Court:

1565

Q. Did they take you right out of the store? A. Yes, it was June 3rd.

The Court: June 3rd, she says. Are there any questions by either of the other counsel?

Mr. Carabba: No questions.

Mr. Geoghan: No questions on behalf of Indovino.

By Mr. McGough:

1566

Q. Was it the day after that you heard Malinski say this about the cop that you went to Vernon Avenue? A. That is right.

Q. You said it was February 16th? A. That is right.

Mr. McGough: All right.

The Court: Step down.

Mr. McGough: Now I will call Mr. Di Pisa.

*Pietro Di Pisa—For People—Direct* 1567

PIETRO DI PISA, residing at 314 East 3rd Street, Manhattan, New York City, called as a witness in behalf of the People, and being duly sworn by the Clerk, Mr. Jehle, testified as follows:

*Direct examination by Mr. McGough:*

Q. Do you know Morris Malinski? A. Yes, sir.

Q. Are you related to him? A. Yes, sir. 1568

Q. How? A. I married his sister.

Q. You married his sister? A. Yes.

Q. And what is her name? A. Shirley Malinski.

Q. Now in February, 1941, where were you living? A. 231 East 10th Street.

Q. Is this a photograph of the house? A. Yes, sir.

Mr. McGough: I offer it in evidence.

The Court: Show it to counsel.

Mr. Solovei: I object to it upon the ground that it is incompetent, irrelevant 1569 and immaterial.

The Court: Qualify it.

By Mr. McGough:

Q. Mr. Di Pisa, will you look at that photograph, please, and tell me whether that is a correct representation? A. Yes.

Q. Of how the house looked at the time you lived there in February 1941? A. The same thing.

Q. The same thing? A. Yes.

1570

Mr. McGough: I now offer the photograph in evidence.

Mr. Solovei: Objection.

The Court: Objection overruled.

Mr. Solovei: Exception.

The Court: The photograph may be marked.

(Photograph received and marked People's Exhibit 12.)

1571

Mr. McGough: Will your Honor permit me to pass that around to the jury?

The Court: Yes.

Mr. Meadow: Will your Honor instruct the jury that that is only as to the defendant Malinski?

The Court: Gentlemen of the jury, I instruct you that this is admitted only with reference to the defendant Malinski. I instruct you that it has no binding force upon the defendant Rudish or the defendant Indovino.

1572

By Mr. McGough:

Q. Now in February of 1941, were you living with your wife Shirley at that address? A. Yes, sir.

Q. Was there anybody else staying there with you at that time? A. His girl friend.

Q. Whose girl friend? A. Murray Malinski.

Q. What is the girl friend's name? A. Jean.

Q. Did you see that girl here today? A. Yes, sir.

Q. Now sometime in the month of February, did you read a newspaper about a policeman being killed? A. Yes, sir.

Mr. Solovei: I object to the question.
The Court: Yes or no?
The Witness: Yes, sir.
The Court: Objection overruled.
Mr. Solovei: I except.

By Mr. McGough: 1574

Q. Did you read the name of the policeman in that paper?

Mr. Solovei: I object to the question.
The Court: Objection overruled.
The Witness: Yes.
Mr. Solovei: Exception.

By Mr. McGough:

Q. What was the name of the policeman? A. Fox. 1575

Q. What paper did you read that in? A. The News.

Q. Do you remember what day of the week you bought the paper and read that? A. Sunday morning.

Q. Now did you see Malinski the night before you read about Fox in the newspaper? A. Yes, sir.

Q. Where did you see him? A. In my house.

Q. Was that at 231— A. Yes, sir.

Q. —Tenth Street, as you said? A. Yes, sir.

1576

The Court: The night before was it what, you mean, Mr. McGough?

Mr. McGough: The night before he read about the Fox case.

The Court: You mean when it was dark?

Mr. McGough: I was just about to bring that out.

The Court: He said it was on Sunday morning. The night before would be Saturday night.

1577

Mr. McGough: I am about to ask the hour.

The Court: All right.

By Mr. McGough:

Q. You say you saw him the night before—A. Yes, sir.

Q. —you read it in the paper? A. Yes.

Q. What time that night did you see him? A. It would be 1:30 to 2 o'clock in the morning.

Q. So that would be early Sunday morning?

1578

A. Yes.

Q. Were you asleep just before you saw him? A. Asleep, yes.

Q. What happened? A. He come in and knock loud on the door; knock loud, so my wife got up, got up and opened the door. I saw Malinski in the front as I w. ke up. I saw Malinski in front of the kitchen door. He said he shoot a cop in Coney Island.

Q. He said he shot a cop in Coney Island? A. "And I got $200 in the pocket".

Q. "I got $200 in my pocket"? A. Yes, sir.

Q. What else did he say? A. Then Jean was outside.

Q. Who? A. Jean.

Q. The girl? A. Was in the kitchen, so he told the girl—

By the Court:

Q. She or he? A. She.

By Mr. McGough: 1580

Q. Who is that? A. She. He says, "If you don't go back to bed there I give you the same dose as I gave the cops".

Q. Who said that? A. Murray Malinski (pointing).

Mr. McGough: Will you have that girl stand up, please?

(Virginia Goonan stands up in the courtroom.)

Q. Will you look at this young lady and tell 1581
me whether that is the girl you saw at that house? A. The girl.

Q. Is that the girl you said was called Jean? A. Yes.

Q. Indicating Virginia Goonan? A. Yes.

(Virginia Goonan leaves the courtroom.)

Q. When Malinski said that, what did you do? A. I grab the door and I told him to get the hell

out of my way, see, so he get out. He going out and I don't see no more since that time.

Mr. McGough: You may inquire.

*Cross-examination by Mr. Solovei*:

Q. You and Malinski had some trouble, didn't you? A. No, sir.

Q. Didn't Malinski beat you up because you were beating your wife, rather his sister? A. No, sir.

Q. What? A. No, sir.

Q. Did you have a fight? A. No, sir, I don't got nothing against Malinski.

Q. Nothing against him? A. No, sir.

Q. What time did you go to bed Saturday night? A. Saturday night, around 10 o'clock.

Q. 10 o'clock? A. Yes.

Q. Well, did you read about the Fox murder before you went to bed? A. No, sir.

Q. Did you know about the Fox case before you went to bed? A. No, sir.

Q. When Malinski came to your door of the house and knocked at your door, did you know about the Fox case then? A. No, sir.

Q. You say you read the paper next day? A. Yes, sir.

Q. What paper did you read? A. The News.

Q. You saw the News Sunday? A. Yes, sir.

Q. When was it you spoke to somebody about this case for the first time? A. I never spoke because that was in the morning. Only my wife in the morning said a cop be killed, I read in the paper.

Q. I am talking about when did you talk to

somebody of the police or anybody at all about this case for the first time? A. The first time when they pick me up on the job.

Q. The first time? A. Yes.

Q. And you spoke to the police about it? A. The first time; no, sir.

Q. What? A. No, sir.

Q. When did you talk to the police about it for the first time? A. They pick me up on the job.

Q. When they picked whom up on the job? 1586
A. Me. They pick me up.

Q. When was that? A. That was last Tuesday.

Q. Before last Tuesday— A. Yes, sir.

Q. —of this year— A. Yes, sir.

Q. —you never spoke to anybody about this case at all? A. No, sir.

Q. Is that right? A. Yes.

Q. And you didn't talk to any police? A. No, sir.

Q. You didn't talk to anybody from the District Attorney's office? A. No.

1587

Q. Is that right? A. Yes.

Q. And they just picked you up off the job and then you went over there and told them what you knew? A. Yes, sir.

Q. Is that right? A. Yes.

Q. Now who told you it was in February? A. I read it in the paper.

Q. And did you remember it since? A. Yes, sir.

Q. Did you write it down in some memorandum book? A. My wife got a piece home.

Q. What? A. My wife got the piece home.

1588 *Pietro Di Pisa—For People—Cross*

By the Court:

Q. What piece? A. The piece of paper.

By Mr. Solovei:

Q. She wrote it down on a piece of paper? A. No, the piece of paper is home.

By the Court:

1589 Q. A piece from a newspaper? A. Yes.

By Mr. Solovei:

Q. I am talking about, did you write it down? A. No, sir.

Q. The date? A. No, sir.

By the Court:

Q. Did your wife get the piece from the newspaper? A. I think so.

1590 Q. What piece from the newspaper was it? Whose paper was it? A. The News.

Q. From what day? A. The 16th or 15th.

Q. The 15th of February? A. Yes, sir.

Q. Is that the paper that you bought? A. Yes.

Q. Your wife kept the piece? A. Yes.

The Court: Proceed.

By Mr. Solovei:

Q. Your wife kept a newspaper of February 15th? A. Yes, sir.

1591

Q. You read the newspaper February 15th, is that it? A. Yes.

Q. And then the newspaper of February 15th, you saw the article in that paper, is that right? A. Yes.

Q. And that paper you kept, is that right? A. It is my wife got it.

Q. Your wife kept it? A. Yes, sir.

Q. And the only paper you saw it in on February 15th was the News, is that right? A. Yes, sir.

1592

Q. You are sure about that? A. Yes, sir.

Q. You are positive? A. Positive.

Q. Cannot be mistaken? A. No, sir.

Mr. Solovei: No further questions.

By the Court:

Q. It was a Sunday paper? A. It was Sunday morning.

The Court: All right.

1593

Mr. McGough: No questions.

Mr. Geoghan: No questions on behalf of Indovino.

Mr. Carabba: No questions on behalf of Rudish.

By Mr. Solovei:

Q. Mr. Di Pisa, you just told us it was on February 15th and you told the Judge you saw it on Sunday, is that right? A. Yes.

Q. And you cannot be mistaken about that either, can you? A. Yes.

Q. Is that right? A. Right.

1594

Q. Sunday morning, you saw it in the paper? A. Yes, sir.

Mr. Solovei: That is all.
Mr. McGough: That is all.
Mr. Solovei: Just one question.
The Court: Come back.

By Mr. Solovei:

1595

Q. Was it Sunday morning you saw it? A. Yes, sir.
Q. Sunday morning? A. Yes, sir.

By the Court:

Q. What kind of a paper was it? A. News.
Q. What was it? A. It was funny sheets.
Q. Funny sheets? A. Yes.

The Court: Step down.

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1596

FRANK MAGUIRE, residing at 633—11th Street, Brooklyn, New York City, called as a witness for the People, and being duly sworn by the Clerk, Mr. Jehle, testified as follows:

*Direct examination by Mr. McGough*:

Q. Mr. Maguire, what is your occupation or profession? A. I am a stenographer attached to the District Attorney's office, Kings County.
Q. And are you a Civil Service employee? A. I am.

Q. And are you assigned to the Homicide Division or Squad in that office? A. I am.

Q. Will you tell us the nature of your duties, please? A. Yes, sir. Whenever a homicide or a felony is committed in Kings County, it is our duty to proceed to the scene of the crime and there an Assistant District Attorney interrogates the witnesses, the victim, and suspects, and it is my duty to take down everything that is said by them.

1598

Mr. Solovei: Of course I object to this line of testimony, as incompetent, irrelevant and immaterial.

Mr. McGough: It is merely preliminary.

The Court: He is telling us what his duties are.

Mr. Solovei: I don't care what his duties are.

The Court: I do. Objection is overruled.

Mr. Solovei: Exception.

1599

The Witness: And upon returning to the office, I transcribe these minutes and I give the typewritten transcript to the Assistant District Attorney who is going to try the case. Well, when a case is reached for trial, I come to court and testify to the accuracy of those minutes.

By Mr. McGough:

Q. Now on the 27th day of October, 1942, were you present at the 62nd Squad? A. I was.

Q. Did you see the defendant Morris Malinski,

1600 who is sitting at the table there, at that time? A. Yes, sir, I did.

Q. Was Assistant District Attorney Edward Heffernan there at that time? A. He was.

Q. Did he ask certain questions of Malinski? A. He did.

Q. And did Malinski make certain answers? A. He did.

Q. And were you the stenographer that attended at that time? A. I was.

1601 Q. Did you reduce to stenographic notes the questions that were asked by Mr. Heffernan and the answers that were made by Malinski? A. I did.

By the Court:

Q. Did you do it accurately? A. I did.

By Mr. McGough:

Q. Did you do it accurately, Mr. Maguire? A. Well, with this exception, I left out two words.

1602 On checking the statement, I found two small words that had been left out.

Q. I am talking of the stenographic notes? A. The notes were accurately transcribed.

Q. Subsequent to that time, did you at my request make a typewritten record of those stenographic notes, of the questions and answers at that time? A. I did.

Q. And before coming here today, did you compare your transcript, your typewritten transcript with your stenographic notes to see if it was accurate? A. Yes, sir.

Q. Did you say something about two words? A. Yes, sir, I found two small words had been omitted.

Q. Have you corrected it on this original? A. No, I have not. It will just take a second to.

Q. Will you tell us, please, what time the questioning of Morris Malinski commenced? A. Yes, sir.

Q. And who was present, please? A. His statement commenced at 2:10 a. m.

1604

Mr. Solovei: What date is that, please?

The Witness: October 27, 1942, at 2:10 a. m., and there were present at that time besides Mr. Heffernan and myself, Acting-Captain John J. McGowan, and Detective Charles Celano of the Homicide Squad; Acting-Captain James Dowdell, of the 10th Detective District; Lieutenant James McNally and Detective John McNally of the 67th Squad; Detective George Lowe; Lieutenant George Loures of the 60th Squad, and Detective James Bell, assigned to the District Attorney's office. 1605

Q. Now, Mr. Maguire, I ask you if this is a correct typewritten transcript of the notes that you testified you made at the time Mr. Heffernan questioned Morris Malinski? A. Yes, sir, that is.

Mr. McGough: I offer it in evidence.

Mr. Solovei: I object to it.

The Court: Let me see it. Gentlemen of the jury, I am going to ask you to step

out into the hall for just a few moments. You do not have to bother going upstairs into your jury room. There are certain questions of law that we have to discuss here with which you have no concern. Do not discuss the case among yourselves and keep your minds open.

(The jury retires from the courtroom.)

The Court: Mr. McGough, I have not read this statement. I take it it may contain some reference to other defendants.

Mr. McGough: That is correct, Judge.

The Court: This statement would not be binding under any circumstances against the other defendants, Indovino and Rudish.

Mr. McGough: That is right; just against Malinski.

The Court: To make sure that the defendant Rudish and the defendant Indovino will not be prejudiced in any shape, manner or form by the reading of this statement, I am going to follow a course of conduct that I usually pursue in a matter of this kind, having the Fiola case in mind. Now, I do not know what the statement contains. I am not going to look at it, but if the statement refers to Rudish, I am going to delete the name of Rudish and substitute in its place "Mr. X". If the statement refers to Indovino, I am going to substitute in its place the letter—"Mr. Y", or any letters suggested by

counsel, or Richard Roe or John Doe, in order that neither Rudish's name nor Indovino's name be mentioned in that statement. Is that satisfactory to you, gentlemen?

Mr. Geoghan: I was going to suggest this, if you say "X" and "Y", they will know at least it refers to two different people.

The Court: That I am going to let the statement indicate; otherwise it would be 1610
unintelligible as to who "X" and "Y" are, and that is not for the jury.

Mr. Geoghan: My suggestion was that if you use the word "Blank" in each instance.

The Court: "Blank" and "Blank" might be confusing. I will use Doe or Roe or "X" or "Y" to show that he is referring to two different people, but the identities I am going to keep from the jury. That should be satisfactory to counsel.

1611

Mr. Geoghan: I do not question the accuracy of the statement.

The Court: Is that satisfactory?

Mr. Geoghan: Yes.

The Court: Is that satisfactory to you, Mr. Carabba?

Mr. Carabba: I agree with what your Honor has said and I believe that it is a fair course to pursue as long as the name of the defendant Rudish is not mentioned.

The Court: That is what I am trying

to do. That is the fair thing to do with a written confession.

Mr. Solovei: Will your Honor hear me on that point?

The Court: Yes, I will be glad to hear you; certainly.

Mr. Solovei: Of course, we challenge the confession as made within the purview of the statute, 1; and in conformity with our challenge, we intend to bring forth proof to show that the confession was not voluntarily made.

The Court: You may do so before it is received, if you choose.

Mr. Solovei: Yes.

The Court: You may do so on the voir dire.

Mr. Solovei: I will do so on the voir dire.

The Court: Then I will reserve decision on the offer. You have that legal right to introduce evidence at this time before the confession is received to establish that it was obtained in the manner prohibited by law, and if the Court finds as a matter of law that your contention is sound, then the Court will rule the confession out, or on the other hand, you may, if you choose, though you are under no duty so to do, permit the confession to go into evidence and offer this proof afterwards.

Mr. Solovei: Well—

The Court: You may pursue whatever

course you desire. You understand that, Mr. Solovei?

Mr. Solovei: I understand.

The Court: I advise you now that you are within your rights when you say you have the right to introduce at this time affirmative evidence, or you may cross-examine the witness on the stand concerning whether or not the confession was obtained in violation of law.

Mr. Solovei: Of course, cross-examining a witness would be of no avail because the evidence, after he gets through, your Honor will in all probabilities permit the confession to go in evidence. 1616

The Court: I don't know that. I am not a soothsayer. If you disclose from this witness that this defendant was intimidated in a manner described by the statute, or that a promise was made to him in the manner described in the statute, with which we are all familiar, then I will rule the confession out, if you establish that through this witness. 1617

Mr. Solovei: I told your Honor I intend to challenge the confession.

The Court: Do you wish to do so now?

Mr. Solovei: I will do so now.

The Court: Or do you wish to wait--

Mr. Solovei: I will do so now and do it again later on as my defense. I am doing it now as a question of law, strictly on the question of law.

The Court: You mean you want to do it piecemeal?

1618 *Colloquy*

Mr. Solovei: No, no, I simply now do it in conformity with the statute and as laid down by the courts.

The Court: You have the right to offer any proof you desire tending to show that this confession was extorted in the manner prohibited by law.

Mr. Solovei: That is right.

The Court: Or that the proffered confession is objectionable because of any
1619 other reason stated by the appropriate statute of the Penal Code.

Mr. Solovei: Now in reference to what your Honor is talking about deleting the name, it is also our contention on behalf of Malinski that the confession not only was extorted from him in violation of statute but also that it is false, as far as he is concerned.

The Court: Well, that is another proposition. Its truth or falsity is a matter that cannot be determined at this time.

1620 Mr. Solovei: But I am trying—I have not finished—

The Court: We will not go into that. Wait a moment. You may have a point there, too. The truth or falsity of it may have some bearing, you claim, on its being voluntary? Is that the point?

Mr. Solovei: Yes, and I say the names mentioned in there, that your Honor intends to call "X" and "Y", they are mentioned in there, are persons that did not commit the crime, are false, and we are told they were put in there for the

purpose of convenience of those who examined us at the time.

The Court: Listen, Mr. Solovei, I am trying to conduct this case in the manner provided by law and in line with all the decisions that protect the rights of defendants under like circumstances. I am doing my level best to give these defendants a scrupulously fair trial and not conduct it in a catch-as-can manner. If you have any authorities that you would like to 1622
submit to this Court, to help the Court, I will be glad to receive any and give that consideration.

Mr. Solovei: Well, I don't think—I thing myself it is a simple proposition and that is this: I ask that the confession, if admitted at all, must go in as is, without being altered, without having the names deleted, because we claim that these names that are mentioned in there are persons that did not commit the crime; therefore it corroborates the defendant Maliuski to 1623
such an extent that the names and the confession are therefore false. Supposing we have in there the name of John Jones, who is a banker, and was with us when we committed the crime—I am just giving you—

The Court: The sincerity or lack of sincerity of your point is not being passed on by the Court. Your objection is overruled and you have your exception.

Mr. Solovei: I except.

The Court: Sit down. Bring in the jury.

Mr. Solovei: There is no necessity of your Honor getting excited. I am just stating a point.

The Court: I understand the proposition of law and I am asking you to take your seat so we can continue the trial. You have your exception.

Mr. Solovei: Certainly.

The Court: The Court is not attempting to give you any advice how to proceed, Mr. Solovei. From now on you proceed without any further comment from the Court. The Court will rule at each step.

Mr. McGough: One point of information, your Honor. With respect to the deceased Beitler, does your Honor suggest or infer that perhaps that name should be left in or it should be deleted?

The Court: I will leave Beitler's name in there. Beitler is not a defendant.

Mr. Meadow: On that point, I would like to be heard.

The Court: Yes, I will hear you.

Mr. Meadow: So far as the theory of the indictment claims that Malinski acted in concert with the other two defendants, and one person by the name of Beitler—

The Court: That is right.

Mr. Meadow: Now the confession, of course, is solely competent as against Malinski.

The Court: That is right.

Mr. Meadow: Now by allowing the name

of Beitler in, it prejudices the defendants Rudish and Indovino.

The Court: In what way?

Mr. Meadow: In this respect; that it gives some proof or some testimony to show that Malinski and Beitler at least committed this crime. Now it should not be so competent because it should only be against the defendant Malinski alone.

The Court: Beitler is not a defendant here, Mr. Meadow. 1628

Mr. Meadow: I understand.

The Court: I think I am going further than any Judge of any Court ever went in protecting the rights of defendants.

Mr. Geoghan: I am satisfied.

Mr. Carabba: I am satisfied.

The Court: I do not know of any other Judge that ever does it this way.

Mr. Geoghan: It has been done.

The Court: I don't know of it.

Mr. Geoghan: But not so frequently.

The Court: I could very well let this 1629 whole business go in with just an instruction to the jury to disregard any reference to the other defendants.

Mr. Carabba: That is true.

The Court: And that is about all the defendants would be entitled to. I am going further than that.

Mr. Geoghan: I have not objected to it.

The Court: In the attempt to be scrupulously fair to these other two men, and there is an attempt being made to fox me into the corner.

Mr. Meadow: No.

The Court: Not by you gentlemen. I will not be foxed into any corner. Proceed.

Mr. Solovei: I do not think that is fair.

The Court: The jury is not here. The jury has not heard it.

Mr. Solovei: How am I doing that?

The Court: Now, please be seated. I do not want to hear you.

Mr. Solovei: Will your Honor permit me—

The Court: I said to this man, be seated. Put him in his seat. Sit down. Bring the jury back.

(The jury returns to the courtroom.)

The Court: I will hand you this statement and you gentlemen may confer among yourselves and look it over and take the necessary steps to carry out the order of the Court. While you are looking at it, Mr. Solovei shall have his opportunity to cross-examine this witness.

Mr. Solovei: I would like to look at the statement first.

The Court: You objected to it?

Mr. Solovei: I want to look at it. Don't your Honor want me to look at it?

The Court: You have already objected to it?

Mr. Solovei: I have a general objection but I have not seen the statement at all. I do not know what the contents of it is.

There may be a number of objections that I could make; I don't know.

The Court: You have stated that you desire to offer proof. You shall offer the proof at this time if you desire so to do, otherwise continue.

Mr. Solovei: I ask that I be permitted first to see the statement, your Honor, to see whether or not there are incompetent, irrelevant matters contained therein.

The Court: You have already objected 1634
to it.

Mr. Solovei: I have put in a formal objection.

The Court: There is only one kind of an objection.

Mr. Solovei: I now ask that I be permitted to see the statement for the purpose of making further objections.

The Court: Do you withdraw your objections at this time?

Mr. Solovei: What?

The Court: Do you withdraw your ob- 1635
jections at this time?

Mr. Solovei: No, I am going to object to the statement.

The Court: Do you withdraw your objection for the time being?

Mr. Solovei: For the time being, all right.

The Court: Show him the statement now.

Mr. McGough: I hand Mr. Solovei the statement.

Mr. Solovei: I will have to read the statement.

The Court: You may.

(Mr. Solovei and Mr. Geoghan each receive a copy of the statement which they examine.)

The Court: Proceed. Now you have read this document, haven't you, sir?

Mr. Solovei: Yes, sir.

The Court: Proceed.

Mr. McGough: I am offering it in evidence.

Mr. Solovei: I object to it.

The Court: Do you object?

Mr. Solovei: Yes, I intend to put—

The Court: I am not interested in your intention. You object to the introduction of the statement at this time?

Mr. Solovei: At this time.

The Court: And you ask leave of the Court to introduce evidence?

Mr. Solovei: That is right.

The Court: Proceed. Decision is reserved on your objection.

Mr. Solovei: Take the stand, Malinski.

The Court: This examination is limited to the question of the voluntariness of the confession as defined by law, and whether or not the statute has been violated.

Mr. Solovei: That is correct, sir.

The Court: And solely for that purpose.

Mr. Solovei. That is all.

The Court: Proceed.

MORRIS MALINSKY, residing at 714 Hinsdale Street, Brooklyn, N. Y., a defendant, called as a witness in his own behalf, being duly sworn by the Clerk, Mr. Jehle, testified as follows:

The Court: Mark the statement for identification.

(Statement marked People's Exhibit D for identification.)

1640

*Direct examination by Mr. Solovei:*

Q. Malinsky, you are the defendant in this case, Morris Malinsky? A. Yes.

Q. And when were you arrested on this charge? A. 7:15, October 23rd, Friday morning.

Q. 7:15 a. m.? A. That is right.

Q. And when you were arrested where were you taken? A. To the Hotel Bossert.

Q. And while at the Hotel Bossert, did you see anybody there? I withdraw that. When you say the Hotel Bossert, do you mean to some of the rooms in the Hotel Bossert? A. I walked into 1641 the Hotel Bossert—an elevator, they took me up to the 6th floor and I walked into Room 608.

Q. And when you went there, when you got there, whom did you see in 608? A. Detective McNally.

Q. Who else? A. I walked in with Detective James Bell and Detective John McNally.

Q. Now who was it that arrested you on October 23, 1942, at about 7:15 a. m.? Who were the police officers, do you know? A. Detective John McNally and I think James Bell.

Q. And where were you coming from? A. I left my house at 714 Hinsdale Street. I got to the corner of Snediker and New Lots about a half a block from the station. I left my house at ten minutes after seven to get the twenty after seven train every morning and I get to work at eight o'clock. At quarter after seven I got to the corner of Snediker Avenue and New Lots Avenue and two men jumped out of the corner of the store and they put guns into my head and they said, "If you move, I will blow your brains out", 1643 and the next thing, one of them, Mr. Bell says to the other fellow, "Throw the cuffs on him." I said, "What is this?", and I moved back; so I said, "What is this, a kidnap"?

Q. Just take it easy. A. They said, "Never mind; don't move or I will blow your brains out". They put a pair of cuffs on my hand and they dragged me across the street to a big black car.

Q. And then they drove you to the Hotel Bossert? A. That is right.

1644 Q. Now while in the automobile from where you were apprehended to the time that you reached the Hotel Bossert, were you being questioned by them and did they ask you any questions, Yes or No? A. They did not ask me any questions.

Q. Now at the Hotel Bossert, were you asked questions when you arrived at the Hotel Bossert, and by whom? A. By James McNally: Lieutenant James McNally.

Q. And will you tell the Court and jury just what he asked you? A. As I walked in the door, he says to me, "Come here". He was sitting

in the back near the window in a chair and he had a chair near him. We sit down and he pulled a wallet out of his pocket and had a bunch of pictures there. He started showing me pictures, of one guy, another guy and another guy; showed me a lot of pictures. I said to him, "What is it all about?" So he said to me, "You killed Patrolman Leon Fox". I said, "I didn't kill anybody. I never had nothing to do with it. I never knew nothing about it and I don't know a thing about it". Then he says to me, 1646
"You don't know nothing about it". He got off his chair and he smashed me right on the face and I went over the chair and all. And then after I got up, I was there about 15 minutes, I got up off the floor, so he walks in the next room with James Bell, John McNally and him, and they are talking, and then he says, "Come here." I walk into the room; they got me in between the two beds, one is a living room and one is a bedroom, and I was in between the two beds and he said, "Undress". I said, "What for?" So he made me, you know I 1647
refused to undress. They started to rip my jacket off. They took my jacket off; my pants off; my shirt off; my tie off. The only thing they left me was in my underwear, my shoes and my socks. They said to me, "You don't know nothing"? I said "No", and the next thing I know, I got another smash in the face and down I went.

Q. How many police officers were there at the time, or detectives? A. When I walked in there was just two of them, John McNally and Detective Bell.

1648 *Morris Malinsky—For Defts.—Direct*

Q. Now did they all question you at times? A. That is right.

Q. You were there all morning? A. I was there from Friday morning October 23rd until Monday afternoon.

Q. Let us stick first to October 23, 1942. What time was it that Assistant District Attorney Heffernan got there? A. He got there about two o'clock in the afternoon; two or three o'clock. I cannot repeat exactly. It was around 2 or
1649 3 o'clock in the afternoon.

Q. And how were you dressed when he got there? A. In my underwear and shoes and socks.

Q. And did Assistant District Attorney Heffernan ask you any questions? A. He asked me questions and when I answered him, he said to me, "You are a God-damn liar".

Q. Was the question that he asked you in reference to the Fox shooting? A. That is right. I said to him the same thing what I told McNally and that I know nothing about it. I had nothing
1650 to do with it. I don't know nothing about it; I am innocent.

Q. How long did Assistant District Attorney Heffernan examine you in the room? A. Oh, I would say about half an hour or three-quarters of an hour.

Q. And then he left? A. Then he left.

Q. And did he come back again that evening? A. He come back about nine o'clock that evening.

Q. When he came back the second time, were you dressed at that time? A. Yes, sir.

Q. How many police officers were there at 9 o'clock in the evening while you were at the

Hotel Bossert? A. Oh, a gang of them. I don't know; it was an enormous amout of them in the room there.

Q. And did they again ask you questions? A. Every one of them. One would ask me questions and another would ask me questions and another one. I kept hollering to them I don't know nothing about it.

Q. And outside of being struck in the face as you testified to, were you hit in any other part of your body? A. Well, before Mr. Heffernan 1652
come into the room, I would say it was about 7 o'clock at night, they walked me over to the window where my clothes was laying and they said to me, "Do you see that roof that is six floors down? Do you see where you got your clothes on the windowsill? We will throw you out of that window and they will think you committed suicide". I said, "What do you want to do a thing like that for?" Then they pulled me away from the window and something struck me from behind and I fell over.

Q. Struck you where? A. Across the body. I 1653
said, "Don't hit me. After you hit me, you will kill me." I was afraid. I had 21 skin draft operations on my body.

Q. What do you mean? What did you actually do? A. I picked my shirt up and showed them my body.

Q. Will you please, with the Court's permission, take your shirt off and show this jury the condition of your body that you claim it was on October 23, 1942?

(The witness draws his shirt up and shows his body to the jury.)

Mr. Solovei: With your Honor's permission, may I have the record note that this man's body has evidently been skin-drafted and he says with 21 skin draftings.

The Court: All right.

Mr. Solovei: And it is across the entire chest.

The Court: Yes.

Mr. McGough: I did not see the entire chest.

1655 The Court: On his belly.

Mr. Solovei: All right.

The Court: Sit down.

By Mr. Solovei:

Q. And how late did you stay at the Hotel Bossert? A. I stood there until Monday.

Q. You mean you slept in the Hotel Bossert? A. I would stay up until three or four in the morning and they were questioning me and then I fell asleep and they come in and question me again and when I got up they question me again.

1656 Q. And that continued for how many days? A. Until Monday afternoon about 3 o'clock.

Q. You were arrested on Friday, October 23rd? A. That is right.

Q. That is at 7:15 a. m., is that correct? A. Yes, sir.

Q. You were there all day Friday; Saturday, the 24th of October; Sunday the 25th of October and Monday the 26th of October? A. That is right.

Q. Is that correct? A. Yes.

Q. And on the 27th of October, where were

you taken from the Hotel Bossert? A. We were taken from the Hotel Bossert the 26th of October to the 62nd Squad, the Bath Beach Station House.

Q. What time were you taken there? A. We got there; it was about 3:30 or a quarter of four in the afternoon.

Q. And according to the date that appears on this alleged confession, that is alleged to have been made on October 27, 1942, I don't know the hour, will you please give it to me— 1658

The Court: 2:10 a. m.

Q. At 2:10 a. m. A. That was in the station house.

Q. That was at the 62nd Precinct? A. That is right.

Q. From October 23, 1942, until October 27, 1942, you were not arraigned in any Magistrates' Court, were you? A. I was not.

Q. When were you booked in the police station? A. I would say about 5:30 or a quarter of six Tuesday morning. 1659

Q. That is on the 27th of October? A. That is right.

Q. This alleged confession, People's Exhibit D for identification, did you voluntarily make such a statement as appears in this alleged confession or statement? A. No, sir, I knew nothing about it until the police told me what to say and do. I says, "Stop beating me already, I cannot stand it no more. I will do and say anything you want me to say. Leave me alone. I ain't iron. I ain't had nothing to do with the crime. If you

want me to say what you want I will do and say what you want me to do and say."

Q. Did there come a time when they took you to the scene of where this crime was alleged to have been committed in Coney Island? A. That is right.

Q. Were you on the scene of this crime on February 15th—

The Court: The question is whether
1661 or not he was intimidated.

Mr. Solovei: I will withdraw it. It does not matter as far as I am concerned.

The Court: You have your right to question on that later unless of course you contend that that bears on the question of it being voluntary.

Mr. Solovei: That is the only reason I ask that.

The Court: I will let you show that. You may ask that question.

By Mr. Solovei:

1662

Q. This alleged statement that you made on October 27th, 1942, at the 62nd Precinct, about 2:10 a. m. on October 27th, which has been marked People's Exhibit D for identification, are the facts therein contained alleged to have been made by you, true or false? A. False. I didn't get what you mean. Did I say them things that are in there?

Q. I mean, are the facts contained in that statement true or false? A. To my knowledge, they are false.

Q. Now at the 62nd Precinct, Assistant Dis-

trict Attorney Heffernan again came there, is that right, with a stenographer? A. He was there and he went away and he come back and he went away. He kept coming and going all day long.

Mr. Solovei: I think that is all at this time.

The Court: Do you want to cross-examine at this time?

Mr. McGough: I have a few questions. 1664

The Court: Proceed.

*Cross-examination by Mr. McGough*:

Q. You say you were struck in the face and on the body? A. That is right.

Q. Give me the names of the men that you say struck you? A. Detective James Lowe.

Q. James Lowe? A. Yes, and Lieutenant James McNally.

Q. These are the men that you— A. He was the first man that struck me.

Q. Where did he strike you? A. He hit me 1665 right across the face.

Q. What part of the face? A. I was like facing him. He went like that there with his hand and I went over with the chair.

Q. What part of the face did the Lieutenant hit you on? A. Right over in the face.

The Court: Indicating the mouth and the nose.

Q. You mean right here? A. Yes.

Q. He gave you a backhand slap in what we call the "puss"? A. Yes.

By the Court:

Q. With sufficient force to knock you down? A. He hit me.

Q. He hit you hard? A. Yes.

By Mr. McGough:

Q. Did you tell us before that you went over on your back? A. I went over with the chair and all. I was like sitting on the chair like that.

Q. Did you fall back or fall sideways? A. Sideways.

Q. Now who else struck you, please? A. Then I walked in the room and Detective McNally—I don't know if it is his brother or not, but his name is McNally, too, I think John McNally and James Bell, and then they says to me, "Get undressed". I said, "For what"?

Q. I asked you who struck you next, Malinski. When? A. When I got in between the beds. I think two of them struck me.

Q. You think two of them struck you? A. I ain't sure how many, but I think two of them.

Q. And who are the ones that you think struck you? A. I think it was Bell and McNally.

Q. McNally gave you another one of these? A. That time they did not give me with the back. They hit me with the fist.

Q. He hit you with his clenched fist? A. One hit me in the stomach and one hit me up here in the neck and I fell down on the floor.

Q. Wait a minute. McNally gave you one with the clenched fist? A. That is right.

Q. Where did you say it was? A. McNally hit me in the stomach. He was in front of me and Bell was in back of me. I was between two beds.

Q. Where did Bell hit you? A. In the back of the neck.

Q. What with? A. With his fist.

Q. Now you say you think two of them struck you? A. That is right. 1670

Q. McNally was in front of you and you saw him give you one in the stomach with his fist? A. That is right.

Q. And then you say Bell gave you one in the neck and rear? A. Yes.

Q. Who struck you the next? A. Then I was there for a while.

Q. Who struck you next? A. Well, then they took me into the room again, into the living room. I was all undressed. I was in my underwear and shoes and socks only.

Q. You are sure about that? A. Yes. 1671

Q. Just had your shorts on? A. My shorts, undershirt, shoes and socks.

Q. You had your undershirt on? A. Yes.

Q. Tell me, was this in the Hotel Bossert? A. Yes, Room 608.

Q. On the 6th floor? A. Yes, sir.

Q. And of course when you got this terrific wallop, you let a piercing yell out? A. No, I did not holler.

Q. You did not yell in the Bossert Hotel? A. No.

Q. The cops were beating you up and you

didn't say anything? A. Not right away I didn't holler.

Q. At any time they hit you did you remain quiet and keep it to yourself? A. Most of the time, I did.

Q. You were afraid somebody would hear you? A. Because McNally said, "If you open your mouth I will throw you out of this window."

Q. And for that reason you kept your mouth shut? A. Yes.

1673 Q. Who hit you after Bell hit you? A. After a while I was in the room, they took me into the living room and there were chairs in the living room there.

Q. Who struck you next? A. Who struck me next?

Q. Yes. A. Detective James Lowe.

Q. You are sure it is not George Lowe? A. George Lowe. I know the man if I see his face.

Q. George Lowe struck you next? A. Yes.

Q. Where did he strike you? A. He walked over to me and I was sitting on the chair. He

1674 said, "You got a nice big pair of shoulders." He hit me right in the face but not too hard. He hit me in the face.

The Court: Indicating for the record a back swing of the right hand with the back of the hand, striking the face, is that correct?

The Witness: Yes.

By Mr. McGough:

Q. How did you fall when he did that to you?

A. I did not fall when he hit me. He didn't hit me hard; not hard enough to throw me over. I was sitting in one of the armchairs. He would really have to hit me hard to throw me over.

Q. How many times did he strike you? A. He just hit me once and got away from me.

Q. Is that the only time Lowe struck you? A. Then after about let us see what time—I would say about in the afternoon, about not in the afternoon, about what you say noontime, about 12 o'clock they all—all morning, and they were 1676 questioning me, asking different questions and I kept saying, "I don't know."

Q. My question is, is that the only time Lowe struck you? A. He hit me that time, that afternoon, too.

Q. Where did he hit you in the afternoon? A. I was standing up. Not only him hit me.

Q. Where did Lowe strike you? A. I got hit from a few of them. It come all at once.

Q. Do you know if Lowe hit you that afternoon? A. They all hit me. There was four of them hit me at one time. 1677

Q. You are pretty sure Lowe was one of them? A. Yes, sir.

Q. Did he strike you at any time after that before you went to the Raymond Street Jail? A. Yes, after I went to Raymond Street Jail—

Q. Did Lowe hit you any more? A. At night so they wanted me—McNally walks me over with Lowe and Bell and they say, "You see that roof down there." My clothes was on the window. He said to me, "You see where these clothes is. You are going to lay down on that roof over there. They will think you committed suicide."

So then I said, "What are you doing?" I backed away from the window and something hit me across the stomach and I keel over on the floor. I don't know who swung it but one of them hit me across the stomach with something.

Q. You could not see what it was? A. No.

Q. Did Lowe strike you again after that day? A. Then I started hollering—

The Court: Why don't you answer the District Attorney's question?

The Witness: After that day?

Q. Did Lowe strike you again after that day? A. No.

Q. So Lowe gave you one backhand right to the face and then that afternoon, you are not sure, but three or four of them were throwing punches then? A. They were throwing punches.

Q. In other words, Lowe treated you— A. He must have been in with them.

Q. He treated you pretty good? A. Who did?

Q. He only gave you a backhand to the face and only one— A. What do you mean one?

Q. Did Lowe treat you all right or did he give you a little bit of a shellacking every day? A. They did not hit me every day in the week.

The Court: I want to find out at this point something, Mr. McGough, if I may.

Mr. McGough: Yes.

By the Court:

Q. When the four of them got on top of you,

you said they were throwing punches? A. I was covered up.

Q. Did they hit you? A. Did they hit me?

Q. Did they land? A. Yes.

Q. They were landing on your head? A. On my head and body.

Q. How about your head? A. I had my hands up.

Q. Didn't they get by your guard? A. Not necessarily.

Q. You got at least two smashes in the face, 1682
didn't you? A. Yes, that was from Lieutenant McNally.

Q. On your nose, and the other one from Lowe? A. Yes.

Q. When you say your face, you mean around the mouth, around the nose? A. That is when McNally hit me.

Q. You are putting your hand up to it now? A. Yes.

Q. Were your lips cut? A. It was not exactly cut.

Q. No, no, just answer my question. A. On 1683
the inside.

Q. Did your mouth bleed? A. On the inside.

Q. Did your mouth bleed? A. On the inside; on the gums.

Q. And did your nose bleed? A. No, sir.

Q. Did your nose swell? A. It hurted me.

Q. Was it swollen? A. I didn't look in the mirror.

Q. Were your lips swollen? A. A little bit on the bottom.

The Court: All right; go ahead.

By Mr. McGoogh:

Q. Now from time to time the officers would leave the hotel and go out and come back, wouldn't they? A. Not the first day they didn't leave. They kept coming in until late at night.

Q. Wasn't there a time when somebody left? A. Yes, the first night this was, they left Saturday morning about two or three o'clock, the first night.

Q. Now when you saw Mr. Heffernan and you were about to be questioned with the stenographer present, did you tell him of the beatings the police gave you? A. No, I was warned if I say anything I would get worse when they left.

Q. Who warned you about that? A. McNally.

Q. The Lieutenant? A. Lieutenant McNally.

Q. He told you about that? A. That is right.

Q. At any time during these four or five days while you were at the hotel and the police were coming and going, did you ever ask for a doctor? A. I asked Lieutenant McNally for a doctor.

Q. What did he say? A. He said to me, "What do you want to do, tell him something?" I said, "No, get me a doctor." I was sick. I didn't do nothing and I couldn't drink anything and they were telling me what I was being charged with and I was sick to my stomach.

Q. You knew you were being held there for the murder of the cop, is that right? A. I told them I did not commit it.

Q. They asked you, McNally did in the hotel, he said, "You know you killed Fox"? A. He said to me, "You killed Patrolman Leon Fox."

Q. And then you started to get sick, is that right? A. What?

Q. Did you say then you started a feel sick? A. I said it was a frame-up because I was being charged with a crime I never committed.

Q. At any rate, you asked McNally for a doctor and no doctor came? A. I did not ask the first day for a doctor.

Q. You did not feel you needed a doctor's attention the first day? A. That is right.

Q. In other words, the first day nothing happened to you? A. Yes.

Q. The second day, you really thought you 1688
ought to have a doctor? A. Yes, sir.

Q. Was it because you felt sick on the second day or was it because of the beating they gave you? A. I felt sick; my face was like swollen. I told them my mouth hurts me, too.

Q. When you landed down at the prison, did you ask to see the Prison Doctor? A. I didn't see no doctor.

Q. You didn't make any complaint to the doctor at the Jail? A. No, sir.

By the Court: 1689

Q. The District Attorney asked you if you asked any of the officials to get you a doctor when you got to the Raymond Street Jail? A. I didn't have no injuries.

Q. The District Attorney asked you a question. Will you please answer it. He asked you whether when you arrived at the Raymond Street Jail, when the cops did not have you, whether you asked any of the officials there for a doctor? A. No, sir.

By Mr. McGough:

Q. And while you were down at the Jail, you never needed the services of a doctor at any time, isn't that the fact? A. When I was where? Raymond Street?

Q. Either at Raymond Street or the Queens County Jail? A. When I come into Raymond Street, the doctor came and I don't know what they call it, and gave me a Wassermann; they do
1691 that as a routine, and as he was giving it to me, I passed out.

Q. But I say you never complained at any time while you were at Raymond Street that you wanted a doctor to look you over? A. For the first three weeks I was arrested, I did not even know I was alive.

Q. Answer my question, please; did you ever ask for a doctor while you were down there? A. No.

Q. Do you remember the time that McNally said, "Take your clothes off, I want to take a look
1692 at your body?" A. He did not say he wants to look at my body at all.

Q. Did he say, "Get your clothes off?" A. He said, "Come in here." When I come in there, they ripped my jacket off.

Q. They got your clothes off? A. Yes.

Q. Didn't they look all over your body? A. Yes, sir.

Q. Didn't they ask you if you had any bullet wounds in your body? A. They did not ask me.

The Court: The question is improper in form. Ask him if such a thing happened.

By Mr. McGough:

Q. Withdrawn: At the time that your clothes were taken away, did McNally say to you, "Try to escape from the hotel in your BVD's? A. He did not say that.

Q. He did not say that? A. No.

Q. Didn't he say that he is not going to take a chance on you getting away? A. No.

Q. And that is why they did take your clothes? A. No, that is not right. 1694

Q. You could not have found your clothes and put them on and got out, could you? A. I would not take a chance to go with my clothes. They are on the windowsill near a window, on account of what they say they were going to do with me.

Q. And all your clothes were on the window while you were there? A. At 8 o'clock, he gave me my clothes back.

Q. How many days did you go without your clothes? A. Just that one day.

Q. That was the first day? A. Until 8 o'clock. 1695

Q. And you did not confess until the 27th, is that right? A. Until when?

Q. The 27th, out at the 62nd. A. No, that night.

Q. The 27th? A. No, that night, I said, "Stop hitting me." I said, "I cannot stand it no more. I will do and say everything you want me to do and say." This is about twelve hours after they saw me and he said—I says to him, "What do you want me to say?" So he took me into another room and Spielfogel was there in the hotel with him, the two of them, and started telling me different things. First he sent

1696 me into a closet with Spielfogel and I said, "Could I talk with Spielfogel?" I said to him, "What are you doing with me?" He said, "Honest, Moish, I know you didn't commit the crime. Dave Yellin committed the crime but tell them anything to get out of it. My wife says you were intimate with her." I said, "I never touched her. Didn't she tell you that when she was in the street and you and Dave Yellin put the guns to my head and your wife admitted it
1697 that it wasn't so and had she said it was, you would have shot me in the head," and he turned around and gave the wife a black eye.

Mr. Solovei: I suppose you do not want that part?

Mr. McGough: It is all right.

The Court: Proceed.

By Mr. McGough:

Q. Was it then that you said to Spielfogel, "Well, they knew so much. I guess I better
1698 go out and tell them the rest". A. I never said that to him. He knows that himself. He is the guy that says to me, "Hey, Moish, don't let them hit you. You know you didn't do it. Go out and say I told you to tell the truth."

Q. Do you know any other names of police officers that you say struck you? A. No, sir.

Q. McNally and Bell and Lowe, is that right? A. The two McNallys.

Q. The two McNallys? A. Yes.

Q. What did the second McNally do? You did not tell me that. A. The four of them got

me together in the hotel and they were swinging away at me.

By the Court:

Q. Where did they strike you? A. All over.

Q. Four men were beating you? A. One of them hit me in the back.

Q. I want to understand what you claim so that I may be in a position to rule on it. Where do you claim they struck you? A. I was standing—first one walked over and hit me, McNally. 1700

Q. What did he hit you with? A. With his hands.

Q. With his first? A. And he punched me in the stomach, and another one in back of me and I straightened up.

Q. Let us get one at time so we can make that clear. A. I don't know how many they were.

Q. One struck you in the stomach with his fist? A. Yes. That was the start of it and I covered up.

Q. And you got one in the back of the ear? A. Yes. 1701

Q. With the fist? A. Yes.

Q. You mean where the bone is? A. Somewheres over here.

Q. With the fist? A. Yes.

Q. And was that a heavy blow? A. Yes, they were punching away.

Q. That is two blows. Can you tell us if you got a third blow? A. I was getting them all at one time.

Q. How many blows? A. I could not count it; could not count it.

Q. Was it more than two? A. Sure.

Q. More than five? A. I imagine it was more.

Q. And each of the blows was a heavy blow, wasn't it? A. Yes.

Q. Where did these blows land? A. When I got through, it was hurting my back.

Q. Where did they land? A. One on my back; one on my head and one in my face.

Q. What part of your face was struck? A. In my face, on the top of my forehead.

Q. What part of the top of the forehead? A. Right here (indicating).

Q. Indicating the right forehead? A. Yes.

Q. Where else were you struck, what part of the body? A. In the stomach.

Q. How many times were you struck in the stomach? A. I could not count them.

Q. Where else were you struck? A. In the stomach, my back, in the back of my head and on my forehead.

Q. And all in all how many blows were rained upon you by the four men? A. I could not count them.

The Court: All right; go ahead, Mr. McGough.

Mr. McGough: That is all.

Mr. Solovei: That is all.

The Court: Step down.

(The witness leaves the stand.)

The Court: Come back here for a minute.

1705

MORRIS MALINSKY, recalled.

By the Court:

Q. Did you appear before a Magistrate? A. The fourth day after they had me.

Q. That would be what day? A. October 27th, Tuesday morning.

Q. In the Homicide Court? A. Felony Court.

Q. Did you stand up in the presence of the Magistrate? A. Yes.

1706

Q. Right in front of the bar? A. Yes, sir.

Q. Within his view? A. Yes, sir.

The Court: All right, step down. Proceed, Mr. Solovei.

Mr. Solovei: That is all, your Honor.

The Court: On the voir dire?

Mr. Solovei: On the voir dire, yes, except that I just want to ask the District Attorney to make a concession as to the day that he was arraigned, in view of your Honor's questions, I think it was the 29th of October.

1707

The Court: He said the 27th.

Mr. Solovei: That is the date the statement was taken.

The Court: The defendant said the 27th.

Mr. Solovei: Subject to correction, your Honor, the District Attorney will find it out.

Mr. McGough: The statement is 2:10 here around that morning.

Mr. Solovei: That is the voir dire as far as the defense is concerned.

The Court: Do you desire to introduce some evidence on the subject, Mr. District Attorney?

Mr. McGough: Yes, your Honor.

The Court: It is now half past five and I think we will take that up tomorrow morning.

Mr. Foreman and Gentlemen of the jury, the Court is about to take a recess until tomorrow morning at ten o'clock. I must admonish you again not to discuss this case either among yourselves or with any other person or permit any person to speak to you about this case. To make doubly sure, not that I anticipate any eventuality of that sort, all conversations had with jurors will hereafter be in the presence of the Court Officer, and no private conversations are to be had under any circumstances without permission of the Court. We are now reaching the close of the trial and let us obey the admonition of the Court. Do not read anything in the public press, if any article should be in the public press. The Court Officers are instructed that the jurors may have newspapers but they will be examined by the Court Officers before the jurors have access to them, and if there is any article in the paper about the case it will be deleted before the jurors see the newspapers. I admonish you again, Gentlemen of the jury not to form or express any opinion or conclusion as to the guilt or innocence of the defendants or either

of them or any of them until the case is finally submitted to you by the Court after a charge on the law. You may retire and return tomorrow morning at ten o'clock.

(The jury retires from the courtroom.)

The Court: The defendants are remanded.

Recess to 10 a. m. to June 18, 1943. 1712

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Brooklyn, N. Y., June 18, 1943.

After Recess. Trial Resumed.

Mr. McGough: I take it that I will be permitted at this time to offer some evidence on the voir dire. I would like to call some witnesses at this point.

The Court: Yes. 1713

LIEUTENANT JAMES McNALLY, shield No. 262, 62nd Squad, called as a witness in behalf of the People, being first duly sworn by the clerk, Mr. Jehle, testified as follows:

*Direct examination by Mr. McGough:*

Q. Lieutenant McNally, are you in command of the 62nd Squad in the Borough of Brooklyn? A. I am.

Q. Did you handle the investigation into the death of Leon Fox in Coney Island back in

1714 February, 1941? A. I did. I was specially assigned to that case.

Q. By that, you mean assigned by the Police Department to this investigation? A. Yes, sir.

Q. Now, Lieutenant McNally, with respect to the defendant Morris Malinski, did you see him at the Bossert Hotel some time about the date of his arrest, in October, 1942? A. I did.

Q. Did you see him at other places besides the Bossert Hotel? A. Since that; yes.

1715 Q. Did you see him at the 62nd Squad? A. Yes; I did.

Q. When you saw him at the Bossert Hotel did you have a talk with the defendant about this case? A. I did.

Q. Did you at any time strike him? A. I did not.

Q. Did any police officer or any other person in your presence strike this defendant Malinski? A. They did not.

Q. Did Malinski at any time complain that some police officer or police officers struck him? A. He did not.

1716 Q. Did you, Lieutenant McNally, with your hand, indicating in a backward fashion, slap this defendant Malinski on the face? A. I did not.

Q. Did you, Lieutenant McNally, with your clenched fist, strike this defendant Malinski in the stomach? A. No, sir.

Q. Did anybody else do that at any time while you were there? A. No, sir.

By the Court:

Q. Did anybody threaten to throw him out of the window? A. No, sir.

Q. At any time? A. Any time.
Q. In your presence? A. No, sir.

*Cross-examination by Mr. Solovei:*

Q. Lieutenant, how long have you been a member of the police force? A. Sixteen years.
Q. How old a man are you? A. Forty.
Q. How tall are you? A. Five eleven.
Q. And how heavy are you? A. 175.
Q. Now, when was the defendant Malinski 1718
arrested? A. He was taken into custody on the 23rd of October about 7:30 a.m.
Q. He was arrested in the Borough of Brooklyn? A. He was.
Q. That was as he was leaving his home in the Borough of Brooklyn, is that correct? A. I was not present when he was arrested.
Q. You were so informed? A. Yes.
Q. And was it Detective Bell and Detective Lowe who took him in custody? A. No; Detective Bell and Detective McNally.
Q. That is not yourself; that is another Mc-
Nally? A. That is my brother. 1719
Q. When he was taken in custody he was brought immediately to the Hotel Bossert in the Borough of Brooklyn, is that correct? A. He was.
Q. And the Hotel Bossert is not a police station nor is it any branch of the Police Department of the City of New York; is that correct? A. That is correct.
Q. Nor it it any branch of the District Attorney's office of the City of New York? A. No, sir.

Q. You had two rooms at the Hotel Bossert, is that correct? A. We did.

Q. You brought him up there to those two rooms, is that right? A. Yes, sir.

Q. And immediately upon his arrival at the Hotel Bossert were you there? A. I was.

Q. Did you immediately commence interrogating the defendant Malinski? A. I stripped him first.

Q. Did you then interrogate him? A. I did.

Q. Did you ask him questions? A. Yes, sir.

Q. You asked him all about the Fox murder, is that correct? A. I questioned him on the Fox murder, yes, sir.

Q. Was he seated in a chair at the time? A. When he first came in?

Q. What? A. When I first questioned him?

Q. Yes. A. When I first questioned him about the Fox case?

Q. Yes. A. No, sir.

Q. Was he standing up? A. Yes.

Q. How many police officers were at the Hotel Bossert when Malinski arrived, outside of yourself, your brother McNally and Detective Bell? A. No one.

Q. Just the three of you? A. That is all.

Q. For how long a period of time would you say you questioned Malinski before some other detectives came in? A. Till 5:30 that evening.

Q. 5:30? A. Yes, sir.

Q. In other words, you say about 7:30 in the morning— A. He was brought there about 8:15, arrested about 7:30.

Q. About 8:15 that morning—there were no other police officers came into the Hotel Bossert

till about 5:30 that evening; is that correct? A. No; that is not correct.

Q. That is what you said? A. Yes, I know. I take that back.

Q. All right; just correct it. A. Detectives Lowe and Celano came to the hotel about eleven o'clock, I believe.

Q. In the morning? A. In the morning; and I sent them right out again.

Q. How long did they remain in the premises before you sent them out? A. I would say about 1724 half an hour.

Q. What time did they come back? A. They came back at six o'clock.

Q. About six o'clock? A. Yes, sir.

Q. Did Detective Bell and and your brother officer, Detective McNally, also examine the defendant Malinsky by asking him questions? A. Yes, sir.

Q. In other words, at different times the three of you asked him questions from time to time, is that correct? A. That is right.

Q. You asked him whether he knew anything 1725 at all about the Fox murder or whether or not he participated in the Fox murder; is that correct? A. I did.

Q. You tried to break the Fox murder case? A. Every cop did.

Q. I mean you were trying at that time to break the Fox murder case? A. That is right.

Q. Did you carry the case? A. No, sir; I was assigned to Queens when it happened.

Q. Who was the officer that carried the case? A. Well, the original officer assigned to it, I don't recall, but later on Detective Lowe was

assigned to it. Basch, I believe, was the original detective.

Q. When you were asking the defendant Malinsky about the Fox murder case, did he continuously, in substance, deny knowing any knowledge at all about the Fox murder case? A. He did until 5:30.

Q. Until what time? A. About 5:30 p.m.

Q. 5:30 p.m. that evening? A. Yes, sir.

Q. Did Assistant District Attorney Heffernan
1727 come in between 8 o'clock in the morning and 5:30 that evening? A. I believe he came in in the afternoon a little while and went out again.

Q. You know as a matter of fact, don't you, Officer, that he actually did come in around two or three o'clock that afternoon? A. I believe he did. I don't know just what time it was.

Q. When he came in he also spoke to the defendant Malinski, isn't that corect? A. No; he did not, sir.

Q. You mean he came there and did not say a word to Malinsky? A. He did not say a word.

1728 Q. You know he was in charge of the District Attorney's office in matters of this kind, to go to see if he could not get a statement from a prisoner who was apprehended charged with the alleged commission of a crime? A. I do.

Q. You know he came there for that purpose isn't that correct? A. He did not.

Q. Did he come in just to say hello to you? A. He came in to take a look at Malinsky, but had nothing to say to Malinsky.

Q. You mean just to look and then walked out? A. That is all.

Q. Did you send for him? A. I believe I

called Mr. Heffernan and told him we had Malinsky.

Q. It is customary in cases of this character, when you apprehend a person or a suspect, to call up the District Attorney's office to get him over there to see if he cannot get statement; isn't that right? A. Not in this case it was not.

Q. You mean this case took an unusual course, is that what you mean? A. No; I had been working with Mr. Heffernan on this case.

Q. In any event, you say Mr. Heffernan who 1730
came there about two o'clock or three o'clock—what time would you say it was? A. It was in the afternoon.

Q. Am I correct when I say about two or three o'clock? A. You could be; yes.

Q. He walked in and spoke to you and your brother officers and never said a word at all to Malinsky? A. That is correct.

Q. Not a question did he ask him? A. Not a question.

Q. How long did he remain there? A. A very short period. 1731

Q. Now, there was Slip was there, wasn't he? A. He was.

Q. What time did Slip get there? A. About 10:30 or 11 o'clock.

Q. 10:30 in the morning, is that correct? A. Yes, sir.

Q. You had spoken to Slip before, didn't you? A. I had.

Q. Did you speak to him in Sing Sing? A. Yes, sir; on several occasions.

Q. When was the first time you spoke to Slip

in Sing Sing? A. I believe it was some time late August; the exact day I could not tell you.

Q. August of 1942?

The Court: This is on the voir dire as to whether they beat your client.

Mr. Solovei: That is right.

The Court: You appreciate that.

Mr. Solovei: Yes; I appreciate that.

The Court: What has his conversation with Slip in Sing Sing got to do with whether or not he beat your client. If it has any bearing on that I will let you pursue it, but please let us not lose sight of the object of this examination.

Mr. McGough: If counsel wants to cross-examine him, I will tell him now I intend to call him back.

Mr. Solovei: I am not going to go into this matter.

The Court: You are talking about what happened in Sing Sing with Slip, instead of finding out what happened in the Hotel Bossert?

Mr. Solovei: I am going on to another ground right now. I just asked the question.

By Mr. Solovei:

Q. You kept the defendant Malinsky at the Hotel Bossert? A. I did.

Q. From October 23rd, 1942 to October 27th, 1942; is that correct? A. 26th, I believe—

Q. He was not taken over to the Bath Beach

Station House until the 27th, was he, Officer? A. Taken there Monday.

Q. Have you got a memorandum of any kind that can refresh your memory? A. No; I have not. The 24th was Saturday. The 26th he was taken to Bath Beach.

Q. What time was he taken over to the Bath Beach Station? On the 26th, on Monday, would you say? A. About 5 p.m. He was booked about 4 a. m. on the 27th.

Q. And when do you say he was booked? A. 1736
On the 27th.

Q. What time was it he was booked on the 27th of October, 1942? A. I was not present then, but I believe it was around 4 o'clock in the morning, 4 a. m.

Q. 4 a. m. on the 27th? A. I believe so.

Q. Or was he booked in the afternoon? A. Booked in the morning, I believe.

Q. And then it was at the Bath Beach Precinct that morning at about 2:10 a. m. on October 27th, 1942, that Mr. Heffernan was present when the defendant Malinsky made a statement; is that 1737
correct? A. Yes, sir,—to Mr. Heffernan.

Q. That you were present? A. Yes.

Q. Detective McGowan was present? A. Captain McGowan.

Q. Captain McGowan, is that right? A. That is right.

Q. Detective Celano? A. That is correct.

Q. Detective Dowdell? A. Acting Captain Dowdell.

Q. And Lieutenant James McNally—that is yourself? A. Yes, sir.

Q. Detective John McNally, is that right? A. That is right.

Q. Detective George Lowe, is that correct? A. That is right.

Q. Lieutenant George Loures, is that correct? A. Yes.

Q. And Detective James Bell, is that correct? A. That is correct.

Q. And this was about 2:10 a. m. in the detectives squad room when this statement was taken,
1739 in the presence of all of these men whose names I have mentioned; is that correct? A. Yes.

Q. Now, how long have you been on the New York Police Force? A. 16 years.

Q. How long have you been a detective? A. 15.

Q. You are familiar with that section of the Code of Criminal Procedure which says that a defendant must in all cases be arraigned before a Magistrate without unnecessary delay? A. I am —when he is arrested.

Q. When he is arrested? A. Yes.

Q. Well, Malinsky was in custody on October
1740 23, 1942, wasn't he? A. Yes. He was not arrested until the 27th.

Q. You mean you kept him there for four days without the man being arrested? A. On his own accord.

Q. You mean he was kept there on his own accord, is that what you mean? A. Yes.

Q. To tell this Court and jury? A. Yes.

Q. You mean he liked the Hotel Bossert and said, "I like to say here"? A. He liked the Hotel Bossert in preference to a station house cell.

Q. You kept him there? A. I asked him if he wanted to be booked on Friday, or would he

rather stay at the Hotel Bossert with his friend Slip; so he chose Slip and the Bossert.

Q. Slip did not sleep at the Bossert, did he? A. No; but he came back every morning.

Q. The defendant Malinsky remained at the Hotel Bossert for four solid days before he was booked on this charge; isn't that correct? A. That is right.

Q. It was at his suggestion you kept him at the Hotel Bossert, is that right? A. After; yes.

Q. On Saturday, October 24th, how many de- 1742
tectives were at the Hotel Bossert? A. On Saturday, October 24th?

Q. Yes. A. Oh, there was quite a few; maybe ten.

Q. Ten detectives, and on Saturday, October 24th, you and many of the other detectives were continuously examining and talking to Malinsky; isn't that correct? A. That is right.

Q. Well, you were talking to him and others, isn't that correct? A. We were all finished with Malinsky.

Q. You mean you did not say a word to him 1743
at all, the 24th? A. We were talking to him about anything—not necessarily this.

Q. You did not talk to him about this case on October 24th, is that right? A. I probably did. I was not asking him if he committed the crime then.

Q. On October 25th, Sunday, October 25th, Malinsky was still at the Hotel Bossert, is that correct? A. That is correct.

Q. On October 24th, how many police officers were there? A. I said ten or twelve.

Q. On Sunday, I am talking about? A. Same thing.

1744 Q. Still ten or twelve on Sunday, October 25th, 1942, while Malinsky was at the Hotel Bossert, did you and the other detectives examine or talk to Malinsky about this case? A. I suppose we did to clear up certain points.

Q. In fact, that went on for hours and hours and hours, is that correct? A. No, sir.

Q. On Monday, October 25th, 1942, Malinsky was still at the Hotel Bossert, is that correct? A. 11 o'clock in the morning.

1745 Q. He was there until 11 o'clock? A. Yes, sir; on Monday he was there until 11 o'clock in the morning.

Q. 11 o'clock in the morning? A. Yes; I believe it was 11 o'clock; between 11 and one.

Q. I think Monday was the 26th? A. Monday is the 26th.

Q. On the 26th he was there until 11 o'clock in the morning? A. About 11 o'clock.

Q. And there were at least about ten detectives there that morning? A. Ten or twelve.

Q. They were still, each and all, asking him

1746 questions? A. No, sir.

Q. Did not say a word to him? A. They talked to him; yes, sir.

Q. About the Fox case? A. I don't know whether they talked to him about the Fox case.

Q. You think they talked to him about his health? A. Sure, they did.

Q. They wanted to find out how he was feeling; is that right? A. He had a very nervous stomach.

Q. They wanted to find out how he was feeling; is that right? A. No; they did not care how he felt.

Q. He had a very nervous stomach is that it? A. Yes; he did.

Q. He was not feeling very well, is that right? A. He was not feeling very well from the morning he was brought in and told he was going to be questioned on the Fox case.

Q. He was not feeling very well and he had a very nervous stomach when you examined him on the 25th? A. He had a very nervous stomach from Friday. From Friday on he had a very nervous stomach. 1748

Q. Did he tell you he was not feeling well; yes or no? A. I told you he said he had a nervous stomach.

Q. I ask you did he say he was not feeling well? A. Well, if he told me he had a nervous stomach that implies that.

Q. Did he ask for a doctor? A. He asked for a doctor on Friday, fifteen minutes after he was brought in; said he was sick, had a nervous stomach.

Q. Did you get him a doctor? A. I did not.

Q. Did he ask for a doctor on Saturday? A. 1749
No, sir.

Q. Did he ask for one on Sunday? A. No, sir.

Q. Did he ask for one on Monday? A. No, sir.

Q. Did you give him an opportunity to communicate with his friends or a lawyer? A. I did not.

Q. Now—

By the Court:

Q. While Mr. Solovei is reading some paper, I want to ask you what the occasion was for taking his clothes off, stripping him?

Mr. Solovei: I object to the question.

The Court: You object to it?

Mr. Solovei: Yes.

The Court: Sustained. Well, now, I am going to overrule your objection.

Mr. Solovei: I except.

The Court: You may except.

By the Court:

Q. Tell us why you stripped him? A. In the first place, your Honor, we did not know whether any of the men in connection with the Fox case had been shot, so I had him stripped, I had him strip himself for that purpose.

Q. For what purpose? A. To see if he had any bullet wounds on him, bullet scars, wounds. Secondly, at some time during the day there was only one detective and myself present. We had Sielfogel down from Sing Sing, and we had this man—if he was going to try to escape he would have to do it in the nude.

Mr. Solovei: Now in view of this answer to your Honor's question I ask for the withdrawal of a juror and declaration of a mistrial, on the ground prejudicial, incompetent and irrelevant testimony crept into this case.

The Court: Your motion is denied, because you asked the policeman, I believe, whether he stripped the defendant; and I don't want the jury to be mystified as to the reason why he was stripped. This officer's testimony is to be weighed and

scrutinized by the jury. They are not bound to accept his explanation at all. His credibility is a matter solely for the consideration of the jury. The jury will understand that.

By Mr. Solovei:

Q. Lieutenant, do you remember the defendant Malinsky, at one time while at the Hotel Bossert, picking up a chair and telling you or 1754
the other officers there, if you heard that he received twenty-one skin graftings on his stomach; and please not to hit him again? A. No, sir; I don't remember that.

Q. If anything like that transpired, you mean it was not done in your presence; is that correct? A. I saw the marks on his chest.

Q. I say if anything like that transpired that I related to you, other than seeing the marks on his chest or on his stomach, you were not present? A. No, sir.

Q. Now, Officer, have you ever read Section 1755
1841 of the Penal Law? A. What is that?

Q. In reference to a public officer or a person holding a public trust—

Mr. Solovei: With your Honor's permission may I read it?

Mr. McGough: I object to it.

Mr. Solovei: To see if he is familiar with it, instead of giving it in piecemeal.

Mr. McGough: Not proper cross-examination; it is incompetent, irrelevant

1756 and immaterial, going into legal matters; which I submit at this time is not proper.

The Court: Objection overruled.

By Mr. Solovei:

Q. I will read you Section 1841 of the Penal Law and tell me whether you are familiar with it, have heard of it before. "A public officer, or person holding a public trust or employment, 1757 upon whom any duty is enjoined by law who wilfully neglects to perform the duty is guilty of a misdemeanor. This section and Section 1840 do not apply to cases of official acts or omissions the prevention or punishment of which is otherwise specially provided by statute." Did you ever hear of that section before? A. Yes, sir, I read it.

Q. Did you ever read or was it ever read to you, Section 1844 of the Penal Law? A. What does that apply to?

Q. (Reading.) "A public officer or other person having arrested any person upon a criminal charge, who wilfully and wrongfully delays to take such person before a magistrate having jurisdiction to take his examination, is guilty of a misdemeanor." A. Yes; I read it.

Q. Familiar with that section? A. I do.

Q. In spite of the fact that you are familiar with Sections 1841 and 1844, and Section 165 of the Code of Criminal Procedure, and had been prior to the time that this defendant was apprehended; Malinski was not taken before a magistrate, arraigned or booked on this charge,

until October 27, 1942; is that correct? A. That is correct.

Q. Now, I think you said something about while Malinski was at the Hotel Bossert, I understood you to say—if I am wrong correct me—that he was not placed under arrest at that time yet; is that correct? A. That is right.

Q. And in spite of the fact that the man was not placed under arrest immediately upon his arrival at the Hotel Bossert, you made him take his clothes off; is that right? A. I did not take 1760 his clothes off.

Q. You ordered him to take his clothes off? A. He took his own clothes off.

Q. You mean he voluntarily took his clothes off? A. No; I told him to take his clothes off and he took them off.

Q. It was not done on his own initiative? You told him to take his clothes off and he took them off, is that right? A. That is right.

Q. That was, you say done around eight o'clock in the morning? A. About that.

Q. From eight in the morning did he still re- 1761 main with his clothes off? A. About six o'clock, I believe.

Q. Six o'clock that evening? A. He put his shorts on earlier than that, and later we put a blanket around him.

Q. At one time there he was stripped, entirely stripped, is that correct? A. Yes, sir.

Q. He had nothing on; is that right? A. That is right.

Q. From eight o'clock in the morning to what time was it that he had no clothes on at all? A. I should say about probably eleven o'clock.

Q. In the morning? A. Yes.

Q. From eleven o'clock in the morning until about six o'clock that evening you say he had just had his B.V.D. shorts on, is that correct? A. Yes; and a blanket.

Q. And a blanket? A. Yes, sir.

Q. You gave him the blanket? A. We did. Somebody gave it to him.

Q. Now, when you saw him from eight to eleven o'clock in the morning, and you stripped
763 him, you say you were looking to see whether or not he had any bullet wounds. You noticed that there were no bullet wounds on his body; is that correct? A. That is correct.

Q. And in spite of that fact that he had no bullet wounds on his body he still—the only clothes you let him put on was his B.V.D.'s, is that correct? A. That is correct.

Q. Officer, if Malinsky, after you examined him, say about eleven or twelve o'clock, and you found no bullet wounds on his person or on his body, had wanted to leave the Bossert to go
764 home, would you let him go? A. I would not.

Mr. McGough: I object to that.
The Court: Overruled.

Q. If he wanted to leave at six o'clock or five o'clock, would you let him go home? A. No.

By the Court:

Q. He was in custody at the time, wasn't he? A. Yes.

*Redirect examination by Mr. McGough:*

Q. Do I understand you to say about 5:30 on the day he was picked up, he told you everything about this case? A. Yes.

Q. Then he was held for about three, three and a half or four days after that; is that right? A. Yes.

Q. Finally, on the 27th Mr. Heffernan came down and took what is called a question and answer statement with the help of Mr. Maguire 1766
the stenographer? A. First we went to Coney Island, then back to Bath Beach.

Q. That is what I am getting at. On the 27th day Mr. Heffernan then took the statement from him? A. Yes.

Q. In between Friday at 5:30, when he told you everything, about four of five days later were you continuing the investigation?

Mr. Solovei: Object to the form of the question.

Mr. McGough: If there is any objection, I will withdraw it. 1767

By Mr. McGough:

Q. On the day he finally told you at 5:30, had you apprehended Indovino and Rudish? A. No, sir.

Q. Were you or your men during that interval of three days working on the apprehension of those men? A. Yes.

Mr. Geoghan: Objected to.

1768

Mr. Carabba: Objected to.
The Court: Overruled.
(Exceptions.)

By Mr. McGough:

Q. In other words, were you continuing your investigation; yes or no? A. Yes, sir.

Q. Did this defendant go to Coney Island in your presence? A. Yes, sir.

1769 Q. Where did you start from on the day you went to Coney Island? A. From the Hotel Bossert.

Q. Who was with Malinsky and you? A. Spielfogel, Detective McNally, Detective Bell, Detective Celano, Mr. Heffernan of the D. A.'s office, and the chauffeur was John Urban, the D. A.'s chauffeur.

Q. In other words, the chauffeur for the Homicide Squad car? A. It was a Homicide Squad car.

Q. Who directed the chauffeur what streets, what route to take? A. After we reached Ocean
1770 Parkway, Malinsky directed the chauffeur from that point on.

Mr. Solovei: I object to this line of questioning.

The Court: I will reserve decision on the objection at this time; because, I take it, that may be in the nature of a confession. I take it that is what it is offered for, a confession—not necessarily verbal, but by conduct and otherwise. I am reserving decision on any statements and

conduct that may be construed as a confession until I have ruled on the admissibility of it. Then, if I permit you to mark the statement in evidence, either oral or written or both, and allied conduct, then I well permit you to go into it. I am going to rule on the question of the voluntariness of the alleged confession. Do you follow me, Mr. McGough?

Mr. McGough: Yes; and I think your Honor is right, and I am going to withdraw this witness and put him back on. However, I want to make my position clear. It is my contention that I have a right to show why the man was held three or four days. 1772

The Court: I will permit you to do that. But that is not what I am thinking of at this time.

Mr. McGough: That is all, Lieutenant.

The Court: Have I made the point clear, Mr. McGough?

Mr. McGough: Very clear. 1773

The Court: I want to limit this inquiry—

Mr. McGough: Strictly to the voluntariness of the confession.

The Court: That is right.

Mr. McGough: All right.

1774 *Det. James A. Bell, Jr.—For People—Direct*

DETECTIVE JAMES A. BELL, Jr., shield No. 1136, 64th Squad, called as a witness in behalf of the People, being first duly sworn by the clerk, Mr. Jehle, testified as follows:

*Direct examination by Mr. McGough:*

Q. Detective Bell, on the 23rd of October, 1942, did you and a brother officer pick up this defendant Malinsky? A. I did.

1775 Q. What was the name of the brother officer, please? A. John McNally.

Q. About what hour on that day did you pick him up, and at what location? A. About seven a. m., at New Lots and Snediker Avenue.

Q. After you picked him up where did you take him to? A. Bossert Hotel.

Q. Were you working on this investigation under the direction and supervision of Lieutenant McNally? A. I was.

Q. How many other men besides yourself were working with him at that time? A. Four.

1776 Q. Besides yourself there were four? A. Four.

Q. Tell the Court and jury the names of the other officers? A. Lieutenant McNally, John McNally, George Low, Charlie Celano, and myself.

Q. Now, Detective Bell, did you ever strike this defendant Malinsky at any time while he was at the Bossert or any place else? A. I did not.

Q. Did you observe any other officers or persons strike this defendant at any time? A. No.

Q. Did this defendant Malinsky ever make a complaint to you about being beaten? A. He did not.

Q. Did you and Lieutenant McNally and De-

tective John McNally and Detective George Low, all at one time, or alone, ever strike this defendant Malinsky? A. No.

Q. Did Malinsky ever have his hands up, indicating in this fashion with both hands over his head, trying to protect himself? A. Never.

Q. Did you ever see him struck by anybody and fall over a chair? A. No.

Q. Did you strike him on the rear of the neck at any time? A. I did not.

1778

By the Court:

Q. Did anyone ever threaten to throw him out of the window or words to that effect? A. No.

Q. Anyone make any threats in your presence? A. No one at all.

Q. In any shape, form or manner? A. No, sir.

Q. Or kind? A. No, sir.

*Cross-examination by Mr. Solovei:*

Q. How old a man are you, Officer? A. Forty-one. 1779

Q. How tall are you? A. About five nine and a half, five ten.

Q. What do you weigh? A. 210.

Q. And you were one of the arresting officers in this case? A. I was.

Q. Where did you arrest Malinsky? A. We picked him up at New Lots and Snediker Avenue.

Q. You and who else? A. John McNally.

Q. Where did you take him from there? A. To the Bossert Hotel.

Q. Who was at the Bossert Hotel when you took him there? A. Lieutenant McNally.

Q. Anybody else? A. No, sir.

Q. While in the automobile driving from where you picked him up, up to the time you arrived at the Hotel Bossert, did you question the defendant? A. No, sir.

Q. Did not ask him a question at all? A. No, sir.

Q. Did you tell him what you were picking him up for? A. No, sir.

Q. Well, when you got to the Hotel Bossert, what floor did you get to? A. The sixth.

Q. What rooms did you occupy there? A. 608.

Q. You are connected with the District Attorney's office, aren't you? A. I am.

Q. I mean you are assigned there? A. That is right.

Q. Who arranged the renting of the rooms at the Hotel Bossert?

Mr. McGough: Objection.

The Court: Overruled.

Q. Do you know? A. That I don't know.

Q. Well, when you got to the Hotel Bossert, did you ask him questions there? A. Lieutenant McNally did.

Q. How long did Lieutenant McNally question him? A. I would say off and on all day.

Q. Did you question him at all? A. Yes.

Q. Who was with you when you made the arrest, you say? A. McNally.

Q. That is a brother of the Lieutenant? A. John McNally.

Q. Did he question him also? A. I presume so.

Q. When you say all day, do you mean from the time you arrived there a little after eight o'clock, until what time in the evening? A. I was in and out.

Q. Well, what time did you come back and remain there? A. Well, I got there, maybe 7:30, 8 o'clock. I was there maybe until 10 or 11, and I left and got back about 3 o'clock.

Q. In the morning? A. Yes. 1784

Q. The defendant was still being questioned? A. That is right.

Q. By the three of you or by other officers? A. Then when we left, Low and Celano, came back to the room.

Q. What was the first thing you did with the defendant when he arrived at the Hotel Bossert? A. We stripped him.

Q. Took all his clothes off? A. Yes, sir.

Q. While you were examining him and Lieutenant McNally and John McNally, he was actually stripped, is that correct? A. Well, he put his shorts right on again, I am pretty sure. 1785

Q. When was it he put his shorts on, do you remember? A. Not offhand, but it was not long he put his shorts on.

Q. Would you say it was around noon time? A. No; I left before that. I think he had them on before I left.

Q. In any event, the only thing he did put on was his shorts? A. That is right.

Q. He did not put his pants on nor his coat nor his shirt on? A. No.

Q. When you came back at three o'clock in

the morning he was still in his shorts? A. With a blanket wrapped around him.

Q. Getting kind of cold that night? A. It was not cold, but he was a little nervous.

Q. He told you he was not feeling well, didn't he? A. That is right.

Q. He told you he wanted a doctor, didn't he? A. I don't recall him calling a doctor. I think somebody got Bi-Sodol or something like that for him.

Q. Didn't you hear him tell Lieutenant McNally he wanted a doctor? A. I might not have been there at the time.

Q. Now, isn't it a fact, Detective Bell, that the defendant was struck by somebody around the stomach, with something, and the defendant picked his shirt up, and he said, "Please don't hit me again; I have a sick and sore body; that I received 25 skin graftings and if you hit me hard you are liable to kill me." Was there some talk like that? A. Not while I was there he did not have his shirt on, but I seen there was some kind of scars on his body and that he said he had received as a child from some kind of burns, scars. We asked him about the scars, but at no time was he struck by any one.

Q. That is, while you were there? A. While I was there.

Q. Now, on Saturday, was he still in his B.V.D.'s? A. No.

Q. Were you there when Assistant District Attorney Heffernan came in? A. Possibly. I am not sure.

Q. Did you see him there? A. I seen him in

the hallway or in the room. I seen him there some place.

Q. Saw him in the room some place? A. In the building I seen him.

Q. While you were there and saw Assistant District Attorney Heffernan there, did you see him question Malinsky? A. I don't remember being in the room when he was questioned by Heffernan. If he was questioned by him, I don't remember being in the room or being around there. If he was questioned by him I don't re- 1790
member being in the room or being around there if he was questioned by Heffernan or not.

Q. Did you see Heffernan? A. I seen him in the building, in the Bossert Hotel.

Q. How long was he in the room with Malinsky? Was it a long time? A. That I don't know.

Q. Would you say it was over an hour? A. I could not say. I don't know whether he was there when I was not there or whether he was there when I was there. There are two rooms and there was another room on another side. 1791

Q. How long was he there that you actually saw yourself, whether he came before or after? A. I may have just seen him in the hallway for a minute, I may have seen him in the room for ten minutes. I don't recall.

Q. You don't recall whether you saw him questioning Malinsky there? A. No.

Q. You won't say he did, you won't say he did not; is that correct? A. No; I would not.

Q. Would you? A. I would not.

Q. Your superior officer there was John McNally? A. Lieutenant McNally, James McNally.

1792 Q. James McNally, he was your superior officer? A. Yes.

Q. The moment you brought him there over to the Bossert Hotel he was the superior officer in charge of the case, is that right? A. Yes.

Q. In detaining or in arraigning or bringing a defendant before the Magistrate in any way was up to him, is that it? A. That is right.

Q. In any event, you did not bring him before any Magistrate, and did not arraign him, and
1793 he was not arraigned until October 27th, 1942, is that right? A. That is right.

Q. Was that the date he was arraigned, Officer, the 27th? A. It was.

Q. Were you one of the officers that took him to the Bath Beach Station House? A. I am not sure. I may have taken him. I know I went to Sing Sing that day.

Q. Were you at the Bath Beach Station House? A. I was.

Q. Did you go there with the other officers? A. I think I was down earlier in the afternoon.
1794 I am not sure, but I went down there positively at seven o'clock that night.

Q. What time did you leave the Hotel Bossert, or did the defendant leave the Hotel Bossert, do you know? A. I would say around two o'clock.

Q. The defendant left about two o'clock? A. Around that. I am not sure on that time.

Q. Did he leave with you? A. That is what I say, I am not sure. I went to Bath Beach.

Q. You are not sure whether you brought him out to Bath Beach or not, is that it? A. That is right.

Q. In any event, when you got to Bath Beach, you saw the defendant there? A. Yes.

Q. You got there, you say, about seven o'clock that evening? A. I did.

Q. Then while at Bath Beach Police Station, did you have the defendant in the squad room? A. Yes.

Q. It was not in a cell? A. No.

Q. In the squad room, there was Detective James McNally, and John McNally and yourself and Detective Celano and Acting Captain Dow- 1796
dell and many others, is that right? A. That is right.

Q. While in the squad room, at the Bath Beach Police Station, on the afternoon of October 27th, 1942, he was still being questioned by various police officers and detectives there, is that correct? A. I was not there at that time; I got there at seven p.m.

Q. I am talking about at seven p.m., after you got there? A. I don't know whether they were questioning him or not in the afternoon.

Q. I am talking about when you were there, 1797
I am not talking about when you were not there? A. You said, "the afternoon". I did not get there until seven o'clock.

Q. In any event at seven o'clock, after you got there? A. In the evening I was there, they were questioning him.

Q. Who was questioning him? McNally? A. Mr. Heffernan.

Q. Mr. Heffernan questioned him? What was that? About seven o'clock would you say? A. No; he admitted all the facts.

1798 *Det. James A. Bell, Jr.—For People—Cross*

Mr. Solovei: I move to strike out the answer.

The Court: Strike it out.

Q. I am asking you, when you got there about seven o'clock in the evening, you saw Assistant District Attorney Heffernan there, is that correct? A. Yes.

Q. And Assistant District Attorney Heffernan, in the squad room of the detective squad
1799 room at the 62nd Precinct, which is the Bath Beach Police Station, you saw Assistant District Attorney Heffernan questioning the defendant Malinsky; is that correct? A. I did.

Q. And Lieutenant McNally was there and John McNally and Dowdell and Celano, and several other detectives, is that correct? A. That is right.

Q. And that examination from seven o'clock continued until what time? A. I don't know. I would say maybe ten or eleven.

Q. Ten or eleven? A. Yes.

Q. You were there all the time, officer? A. I
1800 was not in the room with them all the time.

Q. You were in the station house all the time? A. I was in the station house.

Q. You were in and out of the room? A. Yes.

Q. What time was it that you actually saw the Assistant District Attorney Heffernan stop examining the defendant Malinsky, at the station house, on October 27th, 1942? A. Might have been 12 o'clock, might have been 11 o'clock, might have been one o'clock.

Q. You mean you cannot give the exact time? A. No.

Q. What time did you leave the station house? A. I did not.

Q. Stayed there all night? A. Yes, sir.

Q. Can you tell us what time Assistant District Attorney Heffernan left the station house? A. Possibly one o'clock.

Q. And it could have been 11 o'clock?

The Court: Let us find out about any beatings or any intimidations, please. Go ahead. 1802

By Mr. Solovei:

Q. Did anybody take any statement from the defendant Malinsky after 2 o'clock in the morning? A. The only statement I seen taken was by Mr. Heffernan. What time that is, I don't recall. It was late, though; might have been 11, 12 o'clock or so. I was coming and going all the time.

Q. The statement that you are talking about, and the only statement started when you were there are seven o'clock? A. No. 1803

Q. What time did it start now, do you say? A. I would say it started late. They were questioning him at the time; then we left for supper; we went out and ate.

Q. You did not permit the defendant Malinsky to communicate with his family, did you, his wife? A. No.

Q. With a lawyer or anybody at all, did you? A. That is right.

The Court: Of course, Mr. Solovei, there is nothing in the law which requires

the Police Department to permit counsel to be present at the time of questioning. That is right, isn't it?

Mr. Solovei: No, I don't agree with you, Judge.

The Court: That is the law. You take your exception to what the Court said.

Mr. Solovei: I except to your Honor's statement. I bow to your Honor's statement. However, I most respectfully dis-
805 agree with your Honor.

The Court: However, it is my statement that the jury will take.

Mr. Solovei: That is right.

The Court: And not yours.

Mr. Solovei: That is correct.

The Court: Proceed. However, I permitted you to show it so that the jury may consider it, as part of the whole picture on this point. But there is nothing in the law that says that a policeman is under any duty to send for the lawyer.

806 Mr. Solovei: I did not say that, your Honor.

The Court: Or to send for the family.

Mr. Solovei: I did not say that. I agree with your Honor there is nothing in the law on that. I did not say that.

The Court: The law does not require that, and the statement is not invalidated because the lawyer is not sent for or because the family is not sent for. That does not invalidate the statement. That is plain, isn't it;

Mr. Solovei: That is very plain.

The Court: That is right, isn't it.

Mr. Solovei: I am inclined to somewhat agree with your Honor, on that point; but that was not the reason I asked those questions. I think your Honor knows the reason why.

The Court: All right.

By Mr. Solovei:

Q. You know, don't you, Officer Bell, with your 1808
experience as a police officer, that defendant or a person arrested, charged with a crime, should be arraigned immediately before a Magistrate or as soon thereafter as possible? A. That is right.

Q. And from October 23rd, 1942, from the time you placed this defendant under arrest, until October 27th, 1942, he was not arraigned in any court; that is correct, isn't it? A. That is right.

Q. Isn't it a fact that you did give him a few back-hand slaps in the face when he told you that he knew nothing about the Fox murder? A. I or nobody else while I was in the room laid a hand on 1809
him.

Q. You were very anxious at that time to break the Fox case, weren't you? A. Just the same as any other case.

Q. And you were very anxious to break the Fox case because a cop's death was involved, isn't that correct? A. Yes.

Mr. Solovei: That is all.

*Redirect examination by Mr. McGough*:

Q. You were very anxious not to do anything

that would prevent that case from reaching a successful conclusion; isn't that correct? A. That is right. We did not want to spoil it.

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JOHN McNALLY, Detective, shield No. 219, 66th Squad, called as a witness in behalf of the People, being first duly called by the clerk, Mr. Jehle, testified as follows:

*Direct examination by Mr. McGough:*

Q. Detective McNally, on the morning of the 23rd of October, 1942, did you pick up this defendant Morris Malinsky with Detective James Bell? A. I did.

Q. Did you take him to the Hotel Bossert? A. I did.

Q. Now, at any time while you saw him at the Bossert, did you strike him at any time? A. I did not.

Q. Did you see any other police officer or individual at all lay a hand on him or beat him? A. No, sir.

Q. Did he at any time while he spoke to you complain that he was being beaten by the police? A. He did not.

Q. Did any one in your presence threaten to throw him out of the window if he did not confess to killing Leon Fox? A. No, sir.

By the Court:

Q. Were any threats made of any kind, na-

ture or quality? A. There were no threats made against him at all.

Q. At any time while you were in his presence? A. That is right.

*Cross-examination by Mr. Solovei:*

Q. Well, you and Bell picked Malinsky up around his home, didn't you? A. That is right; a block away from his home.

Q. Did you put the handcuffs on him? A. 1814
Yes, sir.

Q. Placed him under arrest? A. Yes, sir.

Q. You took him to the Hotel Bossert, is that correct? A. That is right.

Q. When you got there you met your brother officer, Lieutenant McNally? A. That is right.

Q. And while in the automobile with Bell and Malinsky, did you ask Malinsky some questions? A. No.

Q. Did you tell him what you were picking him up for? A. No.

Q. When you got to the Hotel Bossert did 1815
you tell him why you were arresting him? A. I did not.

Q. When you got to the Hotel Bossert did you or your brother officers order his clothes removed? A. We did.

Q. Did you do it? A. Remove his clothes?

Q. Yes; remove his clothes? A. He removed them himself.

Q. You mean he just voluntarily removed them? A. Yes.

Q. He was stripped? A. For a short while, yes.

Q. How long did he remain stripped? A.

About five minutes. He was stripped, then he put his shorts on again.

Q. So that he was stripped just for about five minutes, is that right? A. Yes.

Q. Then he put his shorts on? You mean his B.V.D.'s? A. That is right.

Q. Did not put his pants on? A. No, sir.

Q. Did not put his coat and shirt on? A. No, sir.

Q. While at the Hotel Bossert did you ask him some questions? A. No; I was not doing the questioning.

Q. Did Lieutenant McNally ask him questions? A. He did.

Q. About the Fox case? A. He did.

Q. The defendant denied knowing anything about the Fox case, is that correct, at that time? A. When we first brought him in; yes.

Q. You and Bell and Lieutenant McNally were not satisfied with his answers, were you? Yes or no. A. Well—

Q. Yes or no, please?

The Court: No; I am not going to let him answer "Yes or no."

Mr. Solovei: I except to your Honor's ruling.

The Court: The question of being satisfied is a vague term.

Mr. Solovei: I except to your Honor's ruling.

The Court: (To the witness) Proceed. Answer the question the best way you can.

A. We kept on questioning him about it.

By Mr. Solovei:

Q. And while you were questioning him about it, the defendant Malinsky maintained his innocence, that he knew nothing at all about the Fox murder; is that correct? A. At that time.

Q. Isn't it a fact it was then that somebody struck Malinsky at the Hotel Bossert, and told him that they were not satisfied with his answers? A. No, sir.

Q. Now, you remained at the Hotel Bossert 1820
all day on the 23rd? A. I was in and out of the room.

Q. There were a great many other detectives that came there? A. Not at that time.

Q. What time did many other detectives come there? A. Oh, about eight p.m.

Q. Eight p.m.? A. That is right.

Q. When was it that Malinsky finally put his clothes on? What time? A. I don't remember.

Q. Would you say it was late in the evening or early hours of the morning? A. It was in the afternoon some time, I believe.

Q. He put his clothes on in the afternoon or 1821
about in the evening— A. In the afternoon or early evening.

Q. So that would you say from the time you brought him there, after he was stripped for about five minutes, he was then walking around with his B.V.D.'s? A. He had a blanket around him.

Q. And a blanket, to the early part of the evening; is that right? A. That is right.

Q. Did you see Assistant District Attorney Heffernan come there in the afternoon? A. Yes.

1822

Q. What time was it he got there? A. I don't know the time. Some time in the afternoon.

Q. Would you say it was about twelve o'clock, one o'clock, two o'clock? A. I don't remember what time.

Q. Can you give us your best recollection? A. I don't recollect any time.

Q. When he got there did he ask him any questions? A. I don't remember.

Q. You don't remember that? A. I don't

1823 remember if he did.

Q. Why is it you remember other instances and you don't remember this? A. I just don't remember it.

Q. Is there a reason for your lapse of memory? A. There is no reason.

Q. You have a pretty good memory? A. Fair.

Q. How long was Assistant District Attorney Heffernan in the premises? A. I don't remember that either, because I was in and out of the room; and I don't believe I saw Assistant District Attorney Heffernan leaving.

1824 Q. Did you at any time see Assistant District Attorney Heffernan sitting on the couch with the defendant Malinsky? A. I don't remember it.

Q. Were you there all the time while Malinsky was at the Hotel Bossert? A. No, sir.

Q. Did you go in and out of the Hotel Bossert continuously? A. Not continuously; in and out every once in a while.

Q. Did you take Malinsky from the Hotel Bossert to the Bath Beach police station? A. I was with him, yes.

Q. Did you go in a squad car with him? A.

Some car. It was not a squad car, I don't believe.

Q. It was an automobile in any event? A. Yes.

Q. What time was it you got to the Bath Beach police station on the 27th—or 26th, wasn't it? A. 26th.

Q. Yes. A. I believe it was around five or six o'clock in the evening.

Q. When you got to the Bath Beach police station on the 26th of October, 1942, was Malin- 1826
sky in the detectives' squad room? A. He was.

Q. Did you see Lieutenant McNally or other officers examine or question Malinsky then? A. He made his—

Q. I asked you a question: Did they examine him or question him on the 26th at the Bath Beach police station when you got there with him? A. No; I don't believe they did.

Q. How long did he remain in the detectives' squad room that night? A. Until about four a.m.

Q. Four a.m. in the morning? A. The 27th. 1827

Q. Was there an Assistant District Attorney there that day? A. Yes.

Q. On the 26th? A. 26th and the 27th.

Q. He was there on the 26th and the 27th? Who was the Assistant District Attorney that was there on the 26th of October, 1942? A. Mr. Heffernan.

Q. Did you see Assistant District Attorney Heffernan examine and question the defendant Malinsky on October 26, 1942, in the detectives' room of the Bath Beach police station? A. I did.

1828 Q. How long did that examination continue? A. Oh, approximately a half hour.

Q. You saw a stenographer there from the District Attorney's office? A. Yes, sir.

Q. And you saw him taking down the notes stenographically? A. That is right.

Q. What time was it that Malinsky was finally placed in a cell after you arrived at the Bath Beach police station? A. I believe about four a.m. October 27th.

1829 Q. Four a.m. the morning of the 27th, is that right? A. That is right.

Q. What time was it or when was it that Malinsky was finally booked on this case? A. Four a.m.

Q. Four a. m. of the 27th? A. That is right.

Q. What time was it that Assistant District Attorney Heffernan left the Bath Beach police station on the 26th of October, 1942? A. I don't remember.

Q. Do you know what time he got there? A. I told you before about five o'clock in the afternoon.

1830 Q. Can you tell us approximately what time he left, your best recollection? A. I cannot.

Q. Was he there until twelve o'clock that evening? A. I don't know.

Q. You were there, wern't you, Officer? A. I was there, yes; I don't remember.

Q. Is there any reason for your not knowing? A. No reason at all.

Q. Is there any reason for your memory not serving you at this time? A. I don't know the exact time. I am not going to give you any approximate times that Mr. Heffernan left.

1831

Q. You did not telephone for Assistant District Attorney Heffernan on the 26th? A. I did not.

Q. Was there any examination by an Assistant District Attorney of the defendant between the hour of one a. m. and two a. m. on October 27, 1942? A. I don't remember if there was or not.

Q. You cannot remember that? A. No.

Q. You do remember very clearly, however, that nobody struck the defendant, don't you? A. Yes, sir.

1832

Q. You remember that nobody made any threats to assault him, don't you? A. That is right.

Q. You do remember that nobody threatened to throw him out of the window, is that right? A. That is right.

Q. You do remember that he showed you the scar on his body, that he received as a youngster from some burns? A. That is right.

Q. But you cannot remember when Assistant District Attorney Heffernan left on the 26th of October, 1942, is that right? A. No, sir.

1833

*Redirect examination by Mr. McGough:*

Q. Mr. Solovei asked you if he made a statement to the District Attorney and stenographer on the 26th and then he asked you did he make a statement to the District Attorney and stenographer on the 27th. Did he make two statements, do you know, or did he make one statement? A. I said the District Attorney was there on the 26th and on the 27th.

1834 *John McNally—For People—Redirect*

Q. Was it about midnight of the 26th, the early morning of the 27th?

Mr. Solovei: Object to the question.

Q. If you remember.

The Court: Sustained.

By Mr. McGough:

1835 Q. Can you tell us whether Malinsky made one statement to the D.A. or did he make more than one? A. Made one statement.

By the Court:

Q. You are not certain as to the time when he made it? A. I am not certain of the time.

The Court: All right, step down.

By Mr. Solovei:

1836 Q. You told us he made a statement on the 26th and made a statement on the 27th? A. I said the District Attorney was there the 26th and the 27th.

The Court: We will take a short recess. Do not discuss the case; keep your minds open.

(After short recess. Trial resumed.)

DETECTIVE GEORGE LOW, shield No. 2200, 60th Squad, called as a witness in behalf of the People, being first duly sworn by the clerk, Mr. Jehle, testified as follows:

*Direct examination by Mr. McGough*:

Q. The 60th Squad is the Coney Island squad? A. That is right. 1838

Q. When Detective Basch was transferred to another squad, was this case, the Fox investigation, handed over to you? A. It was.

Q. Now, did you see this defendant Morris Malinsky when he was picked up and brought to the Bossert on the morning of the 23rd of October, 1942? A. I did.

Q. While you were at the hotel, subsequent to that time, did you ever strike this defendant Morris Malinsky? A. I did not.

Q. Did you see anybody else in your presence strike him? A. I did not. 1839

Q. Did you ever have a complaint from him that anybody struck him either at the Bossert or at any other place? A. I did not.

Q. Did you or anybody else in your presence ever threaten to throw him out of the window? A. I did not.

Q. Were there times when you left the Hotel Bossert in connection with this case? A. There was.

Q. Did you bring one David Yellin to New York City at about that time? A. I did.

1840 *Det. George Low—For People—Cross—Redirect*

By the Court:

Q. Were any threats of any kind made in your presence? A. There was not.

Q. Any intimidation? A. No; there was not.

Q. Anybody threaten that he would be thrown out of the window? A. Nobody.

Q. Either in words or in substance? A. No, sir; no, your Honor.

1841 *Cross-examination by Mr. Solovei:*

Q. How old a man are you, Mr. Low? A. Forty-one.

Q. How tall are you? A. Five eleven.

Q. How much do you weigh? A. About 200.

Q. You were not one of the arresting officers in this case? A. I was.

Q. With Detective Bell? A. I was.

Q. Before we adjourned you were called as a witness here and then you left the court-room; is that correct? A. That is right.

1842 Q. You left the court-room with Detective Bell and Detective McNally right behind you; is that correct? A. That is right.

Q. You went around the side of the court-room here, around the hall, and you, Detective Bell and McNally and Lieutenant McNally were in a huddle; is that correct? A. That is right.

Mr. Solovei: That is all.

*Redirect examination by Mr. McGough:*

Q. Did you talk about anything when you were in a huddle; yes or no? A. Yes.

Q. Talk about the case? A. No.

1843

The Court: I have to pass on the admissibility of the proffered exhibits. I must ask a question.

By the Court:

Q. Were you the officer who was present at the time the defendant was arraigned in the Magistrates' Court? A. I was.

Q. Was the defendant brought before a magistrate? A. He was.

1844

Q. In open court? A. He was.

Q. Did the defendant make any complaint to the magistrate that he had been beaten? A. He did not.

Q. Or that he had been intimidated? A. He did not.

Q. Or threats had been made? A. No, sir; he did not.

*Cross-examination by Mr. Solovei (continued):*

Q. Do you know when it was he was arraigned in the Magistrates' Court? A. Yes; it was Tuesday morning, the 27th.

1845

The Court: I should say, in justice to the defendant, at this time, Mr. Solovei, that that is not conclusive against him. The cases so hold. But it is something that may be considered by a jury together with all the other evidence in the case.

By Mr. Solovei:

Q. You took him from the Bossert to the Bath

1846 Beach police station, didn't you? A. No; I did not.

Q. You were at the Bath Beach police station? A. I was.

Q. All day? A. No; I was not.

Q. A little while ago the Assistant District Attorney asked you whether or not while you were in the huddle in the hall, whether you spoke about this case and you hesitated and then your answer was "No", do you remember that? A.
1847 I do.

Q. Was the hesitation because you were in doubt as to whether or not something was said? A. It was not.

Q. You mean the three officers that testified before you, that you were in a huddle with in the hall of this court-room after we adjourned for a few minutes recess, did not say a word about their testimony was? A. They did not.

Mr. Solovei: All right; that is all.

Mr. McGough: That is all I have on
1848 this subject, Judge. There were only four officers named.

The Court: Please proceed.

Mr. McGough: I now ask that this People's Exhibit D marked for identification, be admitted in evidence and marked as an exhibit.

Mr. Solovei: I object to it, if your Honor pleases, upon the ground that the alleged statement was taken in violation of the statutes.

The Court: Certainly as to the point that the defendant was beaten and threat-

ened, that is a question of fact for the jury, there being conflicting versions. That is correct, isn't it? Now, as to the failure to arraign him, that is not conclusive against the People; that does not in and of itself invalidate the confession. The cases so hold. But it is a point to be considered by the jury on the question of the voluntariness of the confession; and I will charge them in proper fashion on that point when I come to charge the jury, if 1850
I submit the case to them. I will overrule your objection.

Mr. Solovei: Your Honor asked me a question and I remained mute. I don't know whether the stenographer got it or not. Whether I agreed with you on the proposition as to the beatings et cetera. I make my objection upon all the circumstances surrounding, from the time of the arrest up to the time the alleged statement was taken by the District Attorney, all of them. 1851

The Court: All of the circumstances referred to may be divided into two classes, namely: (1) The alleged beating and intimidation and threats; and (2) The failure to arraign, as required by the Statute. As to the first group there is a question of fact to be determined by the jury, and as to the second point that is also for the jury to consider. I hold that that does not in and of itself, as matter of law, invalidate the confession. Your objection is overruled.

Mr. Solovei: I except.

1852 *Colloquy*

The Court: Now then, I take it the alleged confession is about to be read.

Mr. McGough: I would like to have it marked and then read it.

The Court: Mr. Solovei, I have carefully considered the point that you raised yesterday in the absence of the jury. The Court has ordered that certain names be deleted from the alleged confession and that anonymous designations be substi-
1853 tuted in their places. I say to you now that I am not foreclosing you from supplying the names so deleted, at the proper time, if you be so advised, or if you deem that the names are of importance to the defense of your case. Proceed.

(The statement was marked in evidence People's Exhibit 13.)

Mr. Solovei: Of course, your Honor, at this time, for the record, which I feel in duty bound to do, I must respectfully
1854 object to the alleged confession going into evidence, and also as going into evidence as suggested by your Honor.

Mr. Geoghan: May I, just for the record, your Honor, not object to the statement but ask your Honor to instruct the jury that this confession will be binding only upon the one who makes it, and not upon Indovino.

Mr. Carabba: I make the same motion on behalf of the defendant Rudish.

The Court: I am going to make cer-

tain observations, and I am going to ask the jury to pay strict heed to what I say. You are about to hear an alleged statement read. The Court has together with counsel read that statement, and the Court is forewarned as to what it contains. You will hear read matters concerning a Mr. X and a Mr. Y. Those names, Mr. X and Mr. Y, have been substituted by order of the Court for names in the confession. Those names have been deleted by order 1856
of the Court from the confession; that is, names other than the defendant Malinsky and the defendant Beitler. You have no right to speculate as to who Mr. X and who Mr. Y are. Is that clear? You have no right to jump to any conclusions as to who Mr. X and Mr. Y are. As far as you know, it may be Christoper Columbus, it may be John Doe, it may be one of five or five hundred million people. Is that clear? You have no right to infer that the X and the Y referred to are 1857
either or both of the other defendants, namely, the defendant Rudish and the defendant Indovino. Now, I cannot impress that upon you too strongly. I believe my English is simple and it is understandable, and I am addressing you jurors in a forthright manner. I am going to conduct this case in the manner provided by law and in fairness to everybody concerned. Each defendant's case must be judged on its own merits, and only the evidence that applies to him

must be considered, and no other evidence. The jury has no right to guess or surmise. The jury's verdict must be based only on evidence. I have cautioned you in a manner that cannot be misunderstood. Now, when you hear this confession read the X and the Y are anonymous persons, and you have no right to even guess as to who they are. Can I say more than that, Mr. Geoghan? Can I say more than that, Mr. Carabba?

Mr. Carabba: Except to say, your Honor—I believe your Honor has covered it—that it only applies as against the person who is alleged to have made it.

The Court: Exactly. Is that instruction satisfactory.

Mr. Geoghan: It is very clear to me and I assume it is to the jury.

The Court: Is there anything else you desire the Court to do?

Mr. Geoghan: Nothing whatever. I think it is full and complete.

Mr. Carabba: Nothing whatever on behalf of the defendant Rudish.

The Court: You are both satisfied with the instructions?

Mr. Geoghan: Yes, your Honor.

The Court: Bring the stenographer back. I want the record clearly to show that I am asking the stenographer to be here on the witness stand so that if Mr. Solovei desires he may have the stenographer to supply the names deleted, if he desires to do that—at the proper time —not now.

*Frank Maguire—Recalled for People—Direct* 1861

FRANK MAGUIRE, resumes the stand.

Mr. McGough: May I proceed at this time to read it to the Court and jury, Judge?

The Court: Yes.

Mr. McGough: (Reading) People's Exhibit 13 in evidence, "Book No. 238, statement No. 21300. Statement of defendant Morris Malinsky, taken at the 62nd Precinct, Brooklyn, N. Y., on October 27, 1942, commencing at 2:10 a.m., by Assistant District Attorney Edward A. Heffernan. In re People against Morris Malinsky, et al. Charge, Murder in the First degree. Present: Captain John J. McGowan, Detective Charles Celano, both of the Homicide Squad. Acting Captain James Dowdell, Tenth Detective District. Lieutenant James McNally, Detective John McNally, Detective George Low, all of the 62nd Squad. Lieutenant George Loures of the 60th Squad. Detective James Bell, District Attorney's office. 1862 1863

"By Mr. Heffernan. FRANK MAGUIRE, Stenog.

"Morris Malinsky questioned.

"Q. What is your name? A. Morris Malinsky.

"Q. Where do you live, Morris? A. 714 Hinsdale Street.

"Q. In Brooklyn? A. Yes."

Mr. Solovei: Has your Honor got a copy of this before you?

The Court: I have not.

Mr. Solovei: I wish you had, because I am now going to make an objection.

The Court: Let me have a copy.

Mr. McGough: I have one copy besides the original, and I furnished that to counsel, Mr. Solovei.

Mr. Solovei: Of course, I have no copy I cannot follow it; but if you will look at this question that is asked—I have
1865 checked it off (handing copy to the Court) it would be an objectionable question, if the witness were called; and I object to it now.

The Court: Overruled.

Mr. Solovei: Exception.

"Q. Morris, I show you New York City Police photo No. 130,710 and ask you if you know the man whose picture is shown there? A. That is Beitler."

1866 Mr. Solovei: That is the question I objected to—so the record will show it.

The Court: Overruled.

Mr. Solovei: Exception.

"Q. That is Abe Beitler? A. Yes.

"Q. And I show you New York City Police, Photo No. 34,881."

Mr. Solovei: Same objection, your Honor, on that.

"Q. And I ask you if you know the subject of the photograph."

The Court: Let me see the answer to that.

(Handed to the Court.)

The Court: Objection overruled.

Mr. Solovei: Exception.

The Court: Start a little back so you have the continuity.

Mr. McGough: All right. I will repeat that question.

"Q. And I show you New York City Police Photo No. 34,881, and ask you if you know the subject of that photograph? A. That is X. 1868

"Q. X? A. Yes; I know him as X.

"Q. I show you New York City Police Photo No. 124,689, and I ask you if you know the subject of that photograph."

Mr. Solovei: To which I object.

The Court: Overruled.

Mr. Solovei: Exception.

"A. That is Y.

"Q. Y who? A. I knew him as Y." 1869

Mr. McGough: I will skip the next one. It is not a question.

"Q. Now, you recall February 15th, 1941, the night that Patrolman Fox was shot? A. Yes; that is right.

"Q. Now a few days before that, or some time before that, did you have any conversation with Beitler? A. Yes.

"Q. Concerning that incident? A. He did not tell me who it was; he just said a payroll.

'Q. Now, where did you have that conversation? A. I happened to bunk into him on Houston Street.

"Q. Near where? A. I think it was near Attorney.

"Q. On the street or in a store? A. On the street.

"Q. When was that conversation? A. What time of the day?

"Q. No, what day? How long before the kill-
1871 ing was it? A. About three days before.

"Q. Was anybody else present besides you and Beitler? A. No.

"Q. Now, tell me what conversation you had then? A. He says to me, could I get a car. I said, 'For what?' He said 'We've got a payroll to take.' So I said, 'I think I can get a car.' I did not tell him where or name the party I would speak to. I just said, 'Yeh, I think I can get a car.'

"Q. Did you have a car at the time? A. No.

"Q. What did he say about the payroll? A.
1872 He just told me a payroll; he did not tell me which.

"Q. He did not say where? A. No.

"Q. Nor when? A. He just said for Saturday night.

"Q. And that Saturday night would be February 15th, is that correct, 1941? A. That is right.

"Q. Did he say about where you were to meet him with the car? A. Yes.

"Q. Whereabouts? A. He told me to pick him up where I seen him that day, on Houston near Attorney.

"Q. Was there any other part of that conversation? A. No; nothing else.

"Q. When you say to 'take' a payroll, do you mean to steal it? A. To rob it.

"Q. Was anything said about any guns? A. No.

"Q. No plans were made at that time between you and Beitler as to who would bring the guns? A. He asked me if I could get any guns. I said, 'I think I can get some.'

"Q. Now what did you do after that with re- 1874
gard to this payroll? Did you talk to anybody else about it then? A. No.

"Q. Did you get a car? A. I seen X and I asked him to get a car for Saturday. He said, 'Yes'.

"Q. Where did you see X? A. On East 8th Street.

"Q. When? A. The next day. I think it was Thursday.

"Q. East 8th Street and where? A. Between C and D.

"Q. Was that a store? A. He lived on that 1875
block; there is a candy store there.

"Q. And was it at the candy store you had the conversation? A. I seen him outside of that candy store.

"Q. You told him to get a car for Saturday? A. Yes.

"Q. How was he to get the car? A. He said he could steal a car.

"Q. Now, did you have a conversation with anybody else about the stickup? A. No.

"Q. When did you next talk to Beitler or to

1876 *Frank Maguire—Recalled for People—Direct*

X about this robbery that you were to commit on Saturday night? A. When I got in the car.

"Q. When was that? A. Saturday night.

"Q. Where did you get into the car? A. On East 8th Street.

"Q. At what time? A. I would say about 8:30 or 9 o'clock, around that.

"Q. At night? A. Yes.

"Q. Who was in the car at that time? A. Just me and X.

1877 "Q. Who was driving? A. X.

"Q. Did you ask X where he got the car? A. He said he stole it.

"Q. Did he say where? A. No; he didn't say where.

"Q. What kind of a car was it? A. The night I seen it it was a Ford.

"Q. What kind of a Ford? A. With a canvas roof.

"Q. Did you go to the Property Clerk's room of the Police Department today? A. Yes.

"Q. Did you there inspect an automobile? A.

1878 Yes, sir.

"Q. Was that the same automobile that was used by X and you to go to the stickup on February 15, 1941? A. Yes.

"Q. Was there something about that automobile that fixes it in your mind? A. I remembered it tonight too; the right-hand knob on the door in the back was hard to open.

"Q. And you tried it tonight and it was in the same condition? A. Yes.

"Q. That is the same car that was used in the stickup? A. Yes.

"Q. Now there were X and you on East 8th Street? A. That is right.

"Q. What happened next? A. We went and picked up Beitler.

"Q. Where? A. On Houston Street near Attorney.

"Q. Was anything said at that time as to guns? A. No, sir; he had a package with him and he got in the car.

"Q. What kind of a package? A. In newspaper. 1880

"Q. Was anything said about what was in the package? A. Well, I surmised what was in it.

"Q. X continued to drive? A. Yes, sir.

"Q. What seat did you sit in? A. First I was in the front, then Beitler said, 'Get in the back,' and I jumped over the seat and got in the back.

"Q. And you sat in the back seat alone? A. Yes.

"Q. And Beitler sat opposite X? A. Yes.

"Q. Where did you go after that? A. Straight 1881 to Coney Island.

"Q. Whereabouts did you go in Coney Island? A. Next door to the movies we stopped first and we had coffee in the restaurant.

"Q. Now, did you on October 25, 1942, go to Coney Island with the detectives and show them that particular restaurant? A. Yes.

"Q. It was the Cosmo Restaurant? A. Yes, sir.

"Q. Who went into the restaurant? A. The three of us.

1882 "Q. You and X and Beitler? A. That is right.

"Q. What did you do with the car when you went in there? A. It was outside.

"Q. On Surf Avenue? A. Yes.

"Q. Where were the guns then? A. In the car.

"Q. Did you talk to anybody in the restaurant, with any friends or anybody there? A. No.

"Q. You had coffee there? A. Yes.

1883 "Q. What time did you leave the restaurant? A. It would be a little after ten.

"Q. What did you do then? A. We went down near the bank.

"Q. You got into the car again? A. Yes.

"Q. Down near the bank? Where was that bank? A. I don't know what street that was.

"Q. Did you go to the same bank and point out to the officers what street you were on, on October 25th of this year? A. Yes, sir.

"Q. That was to West 12th Street you went, is that right? A. I don't know what street

1884 it was.

"Q. And you recognized the same bank? A. Yes.

"Q. Now, when you went around to that street, will you tell me in what direction your car was parked? A. It was parked facing where we rode across the street. What is that, Surf Avenue?

"Q. Facing towards the water or away from the water? A. Away from the water.

"Q. In the direction of Surf Avenue? A. Yes.

"Q. And how far down the block was that car

parked? A. Where we were parked yesterday. I don't know how many feet.

"Q. Was it about 25 feet north of the Bowery? A. About that.

"Q. Was the car parked against the curb or towards the middle of the road? A. I would say it was a little away from the curb.

"Q. Now, when you came to a stop there did they leave the lights on the car? A. No.

"Q. Did they have the motor running? A. Yes, but we were waiting there for a while until 1886
we seen the messenger.

"Q. How long were you waiting? A. It looked like a long time to me because we were waiting there.

"Q. Well, how long would you say it was? Ten, fifteen or twenty-five minutes? A. Maybe half an hour, three-quarters of an hour, something like that.

"Q. Now, did you remain in the car? A. Yes; Beitler got out of the car and I stayed in the car.

"Q. Where did Beitler go when he got out 1887
of the car? A. He walked towards the corner.

"Q. Towards Surf Avenue? A. Yes.

"Q. What did he do when he got down there? A. He was standing there; then a couple of minutes later he waved his hand to me to get out.

"Q. To get out of the car? A. Yes. I jumped out and I seen the cop walking with the messenger, and I seen him come running up.

"Q. Now, before Beitler got out of the car did anything happen to that package that he had there? A. He opened the package before he got

out of the car and he handed me two guns and he took two.

"Q. What kind of guns did he hand to you? A. One like a .45 and one like a .32.

"Q. Was your .45 an automatic or a revolver? A. It was no automatic.

"Q. It was a revolver? A. Yes.

"Q. And what did the other one look like? A. Also a revolver.

"Q. And what calibre uld that be? A.
1889 Which one?

"Q. The smaller. A. About a .32 I think it was.

"Q. So you had two guns? A. Yes.

"Q. And those guns were loaded? A. I did not even look at them, to tell you the truth.

"Q. Now, did Beitler have any guns? A. He had two with him also.

"Q. Do you know what kind he had? A. They were like a .38, something like the police guns.

"Q. Both the same? A. Yes.

1890 "Q. Was either one an automatic, do you know? A. I don't think so. Maybe one was and maybe one was not; I ain't sure.

"Q. But you say one looked like a .38? A. They both looked like .38.

"Q. Did Beitler take those guns with him when he went towards the corner? A. Yes.

"Q. Then Beitler called you out of the car, you say, and you saw two men approaching? A. Yes. As I got out of the car, all of a sudden I seen him come running up and the next thing I heard shots. I turned around and ran back to the corner and I seen the officer falling.

"Q. When you say 'the officer' was he a police officer? A. Yes.

"Q. You recognized him as a police officer? A. Yes.

"Q. He was in uniform, is that correct? A. Yes.

"Q. He fell, and what happened? A. Then the man started to run, so he said, 'Stop or I'll shoot.' He ran after him and he grabbed the bag.

"Q. Who ran up to him? A. Beitler. 1892

"Q. How many shots would you say Beitler fired? A. I don't know. Maybe two or three, I ain't sure. I got scared and I ran back to the car.

"Q. Did the officer fire any shots? A. I think I heard a shot coming back. I ain't sure.

"Q. It might have been more than one shot? A. I don't know. I heard shots and I got scared and ran.

"Q. You ran back to the car? A. Yes.

"Q. Did you see Beitler go after the man who had run away, the civilian? A. Yes, because when I got to the car I thought he was in back of me, and I saw he wasn't and the next thing, I heard him say to the man, 'Stop or I'll shoot,' and he grabbed the bag and I seen him come running back. 1893

"Q. What happened to the man who was running away then? A. He grabbed the bag and Beitler came running back, and X shot away with the car.

"Q. Do you know whether Beitler grabbed the bag from the man's hand? A. I seen him run back with the bag in his hand.

"Q. Did you see him actually take the bag from the man? A. I don't know whether he took it from him or the man dropped it.

"Q. This man was not an officer, was he? A. No.

"Q. Was this the man whom you had seen approaching with the officer when Beitler called you out of the car? A. That's right.

"Q. Now, after Beitler got into the car did he have the bag with him? A. Yes.

1895 "Q. And that left you and Beitler in the car and X still at the wheel? A. That is right.

"Q. What happened then? A. Then he shot away. I bent down.

'Q. You mean the car was driven fast? A. Yes. And I bent down.

"Q. In which direction was the car going? A. I think he shot across the street.

"Q. Across Surf Avenue? A. Yes. Then I heard him holler, 'Let me jump. Slow down, let me jump,' and he jumped first and I jumped after him.

1896 "Q. When you said you bent down, what position were you in? A. In a crouch.

"Q. Crouched down? A. Yes.

"Q. Could you see what street you were going on? A. No.

"Q. How far did you go? A. It seemed a matter of only a few blocks.

"Q. Who got out of the car first? A. Beitler; then I went after him.

"Q. Do you know where it was that you got out of the car? A. No; I don't remember where that was.

"Q. Now, when you got out of the car what

did you do then? A. We seen a cab coming along and we jumped in the cab.

"Q. Do you know whose cab it was? A. No.

"Q. Do you know the name of the driver? A. No.

"Q. You and Beitler got into the cab? A. Yes.

"Q. Did X get in with you? A. No; he drove away with the car.

"Q. With the stolen car? A. Yes.

"Q. And where did you and Beitler go with 1898
this cab? A. To New York.

"Q. All the way over to New York? A. Yes.

"Q. Whereabouts in New York? A. 4th Street and Avenue C. I jumped out there.

"Q. Now while you were in the cab what did you do? A. He gave me the silver and he gave me bills. He gave me about $150.

"Q. Where did he get that money? What did he take it out of? A. Out of a bag.

"Q. What kind of a bag was it? A. It looked like a canvas bag.

"Q. I show you this picture and ask you if 1899
this is a picture of a bag similar to that Beitler had in the car? A. It looks something like that.

"Q. What was the bag made of? A. It was a canvas bag like a cloth bag—canvas or cloth.

"Q. Did it have a lock on it? A. I did not notice it.

"Q. How did Beitler open it? A. I think he cut it open.

"Q. With a knife? A. Yes.

"Q. Did you see him use the knife? A. I seen him put the knife in his pocket. I guess he must have used it on the bag.

1900 "Q. In what form was the money that he gave you? A. Silver, also bills.

"Q. How much in silver? A. About fifty, sixty or seventy. It was a load of silver.

"Q. And how much money did he give you in bills? A. The rest he gave me in bills. I had a hundred and fifty dollars altogether.

"Q. Including the silver? A. Yes.

"Q. How was that silver, loose or wrapped? A. Wrapped up.

1901 "Q. Did you notice the color of the wrappings? A. No, sir; I did not take notice.

"Q. Is this the kind of wrapping (indicating a saimon colored wrapper for quarters)? A. Something like that.

"Q. You don't know whether it was the same color as this? A. I don't remember what color no more.

"Q. Where did you go to in New York? A. Beitler went away himself and I went away too.

"Q. Where did you get out of the cab? A. 4th Street and Avenue C.

1902 "Q. What is there? A. There used to be a club over there.

"Q. What is the name of it? A. Citadel Club.

"Q. Did you go up into the club? A. No, sir; I went to First Avenue.

"Q. What is there at First Avenue where you went? A. I used to work there at a house furnishing place.

"Q. And you went directly to the place you used to work at? A. Yes.

"Q. What address is that on First Avenue? A. I think it is 167.

"Q. Who was the owner of that place? A. Max Rauch.

"Q. Now when you went there did you see Max Rauch there? A. Yes, sir.

"Q. And what did you do then? A. I walked straight to the back of the store and started opening the wrappers.

"Q. The wrappers on the coins that Beitler had given to you, correct? A. Yes, sir.

"Q. What did you do then? A. Then after, I called him in the back and showed him how 1904
much change I had.

"Q. You told whom? A. Rauch. He said, 'Where did you get it?' I said, 'I won it in a crap game.' So I says to him, 'Will you give me bills for it?' He says, 'Yeah'. He did not have it all that night, so he gave me some during the week.

"Q. Now, he did give you bills for it? A. Yes; he gave me bills.

"Q. Did you have any conversation with Beitler about this case afterwards? A. The next time I seen him was the next summer. He was riding 1905
by in a car with some fellows and he blew the horn and waved to me and kept going.

"Q. Do you know what happened to the bag? A. No, sir.

"Q. Do you know what happened to the guns? A. No, sir.

"Q. Now, after you left the scene of the shooting, what did you do with the guns that you had? A. I gave them back to him while we were in the cab.

"Q. You never saw the bag any more? A. No, sir.

"Q. Did you ever see the guns any more? A. No, sir.

"Q. Now did you meet X again after that? A. Yes, sir.

"Q. Did you have a conversation with him about the affair? A. No, sir.

"Q. Did you ever ask him how much he got? A. No, sir.

"Q. Did Beitler tell you anything about what disposition he made of the rest of the money?
1907 A. He said to me, 'Here is a hundred and fifty dollars.' He said, 'Maybe there is more.' He said, 'I want to send some to this guy in the can,' and that is all.

"Q. Did he mention who the person was in prison? A. No.

"Q. The person that he was going to send it to? A. No.

"Q. Did he say he was going to give any to anybody else? A. He said he has got to give some to the tipster.

"Q. Who was the tipster? A. While riding he
1908 says to me, 'Because he gave this to me, I'll give him some.' I said, 'Who?' He said, 'Y'.

"Q. By that he meant the one who tipped him off for the job? A. Yes.

"Q. Did he say how much he was going to give Y? A. No, sir.

"Q. How about X? Did X get a share of the money? A. He must have got it: he must have seen him later on.

"Q. You don't know about that? A. No, sir.

"Q. Now, going back to the scene of the shooting, you had two guns in your hand? A. That is right.

"Q. Did you fire any shots? A. No, sir.

"Q. Are you sure of that? A. Not that I know of, I did not fire any.

"Q. You had both guns out? A. Yes; and then when I heard the shooting, I put them in my pocket and jumped into the car.

"Q. When you say, 'Not that I know of,' do you mean it is possible you might have fired some shots without realizing it? A. I can't say.

"Q. You are not sure whether you did or not? A. I did not feel my hand move or anything. 1910

"Q. Now when you went from New York to the scene of the shooting were you wearing a hat? A. Yes, sir.

"Q. What kind of a hat? A. A brown hat.

"Q. Is this the hat you were wearing? A. It looks like it."

The Court: Now, will you just pause a moment. Mr. Maguire, was a hat exhibited to the defendant at the time?

The Witness: There was, your Honor.

The Court: At this point? 1911

The Witness: At this point. It is referred to in the next question.

Mr. McGough: I will read that question to continue, Judge.

"Q. Is this the hat you were wearing? A. It looks like it.

"Q. Will you look it over and see (handing it to the witness). A. It looks like the hat. Yes, this is the hat.

"Q. Where did you get that hat? A. From some fellow, Harry Levine.

1912 "Q. Do you know where Harry Levine lives? A. I know he lived in Brownsville somewhere.

"Q. Now, I show you New York City police photo No. 139650, and ask you if you recognize the subject of that photograph?"

Mr. Solovei: I object to the question.
The Court: Overruled; exception.

"A. Yes; Harry Levine.

1913 "Q. Is that the boy who gave you the hat? A. Yes.

"Q. And how long before the 15th of February, 1941, did he give you that hat? A. I must have got it a week or two before that.

"Q. And you were wearing that hat at that time? A. Yes, sir.

"Q. Now, when you were getting into the car, after Beitler had fired the shots, as you say, did you have the hat on? A. I don't remember whether I had it on or not, I was so excited.

"Q. But you had it in the car with you? A. When I went there I had it on.

1914 "Q. And when you left the car did you have it with you? A. I didn't.

Q. Now, do you know at which point you lost the hat? A. No, sir.

"Q. But you know that when you got to Coney Island you had this hat? A. Yes.

"Q. And when you left Coney Island immediately after abandoning that car you did not have it any more? A. No, sir.

"Q. So that it was some time between the time that the stickup occurred and the time that you abandoned that car a few blocks from there, that you lost the hat? A. Yes, sir.

"Q. Will you put your initials inside of the hat? A. Put it where?

"Q. Just inside the sweatband. A. (Witness complies).

"Q. That is 'M.M.' which you have written in pen and ink on the inside of this sweatband? A. Yes, sir.

"Q. What denominations were the silver coins? A. I think it was all halves and quarters.

"Q. Now, you are making this statement voluntarily to me? A. Yes, sir. 1916

"Q. Nobody forced you or did anything to you, did they? A. No.

"Q. How have the police treated you since you have been with them? A. All right.

"Q. Nobody did anything wrong to you, did they? A. No."

The Court: Where is that hat?
(Hat handed to the Court).

By the Court:

Q. I show you People's Exhibit B, and ask you to examine it. A. (After examining it) This is it. 1917

Q. That is the hat that the defendant marked in your presence? A. Yes, your Honor.

Mr. McGough: At this time I would like to offer People's Exhibit B marked for identification, in evidence.

Mr. Solovei: I object to it.

The Court: Overruled.

Mr. Solovei: Exception.

Mr. Carabba: I object as to Rudish.

1918 *Frank Maguire—Recalled for People—Direct*

The Court: Objection overruled.

Mr. Carabba: Exception.

The Court: Mark it. The hat is marked in evidence.

(Marked People's Exhibit No. 14).

The Court: Mr. Foreman and gentlemen of the jury: The court is about to take a recess for luncheon. I admonish
1919 you not to discuss the case among yourselves or with any other person or permit anyone to speak to you about this case or discuss it in your presence. You must keep your minds open. Do not form or express any opinion or conclusion as to the guilt or innocence of the defendants on trial or either of them or any of them until the case is finally submitted to you for your consideration, after a charge on the law. You may retire and return at 2:15.

1929 (The jury retired from the room).

The Court: Do you want Mr. Maguire to return here?

Mr. Solovei: I do not.

The Court: Do you want to ask him any questions?

Mr. Solovei: No, sir.

The Court: Do you want to ask any questions, any further questions as to the deleted names; yes or no?

Mr. Solovei: No, sir; I stand on my objection.

AFTER RECESS. TRIAL RESUMED

CHARLES P. CELANO, Detective-Police Officer, City of New York, Shield No. 361, attached to the Homicide Squad, Brooklyn, N. Y., called as a witness in behalf of the People, being duly sworn by the Clerk, Mr. Jehle, testified as follows:

*Direct examination by Mr. McGough*:

1922

Q. How long have you been a member of the Homicide Squad of Detectives? A. About 15 years.

Q. Were you on the tour of detectives that were working under Lieutenant McNally's direction? A. Yes, sir, I was.

Q. About October 1942, on this case? A. That is right.

Q. Were you present at the time that Malinsky made a statement to Mr. Heffernan down at the 62nd Squad, I think it was, on October 27, 1942? A. I was.

1923

Q. Were you present when he stated that he went to a police garage—

Mr. Solovei: I object to the question.
The Court: Finish the question.

Q. —and picked out a certain automobile?

Mr. Solovei: I object to the question.
The Court: Objection overruled.
Mr. Solovei: Exception.
The Witness: I was.

1924

*Charles P. Celano—For People—Direct*

By Mr. McGough:

Q. Do you know who took him to the police garage? A. Yes, sir.

Q. Who? A. Myself and Detective McNally; John McNally.

Q. Where was this garage located? A. It was located under the Meeker Avenue Bridge in Brooklyn. That is a police property garage.

Q. And what date did you take Malinsky
1925 there with McNally? A. It was on a Monday. I think it was October 26th, I believe.

Q. Will you tell the jury what took place when you took Malinsky to that Property Clerk's Garage at that time? A. We took Malinsky in there and I asked Malinsky to walk ahead. There is about 150 or 200 cars in the garage. I said, "Walk ahead by yourself and look at these cars"; so after looking at a number of them, probably 100 or 150 of them; I don't know how many they were, he looked at a car in the corner and he said, "That looks
926 like the car"; so I said, "What makes you think so?" He said, "Well, it has got a canvas top", but he said, "Let me make sure".

Q. It looks like what car? A. It looks like the car that we are looking for; the car that was used in this case," and it was stored there as evidence, so I asked him, I said, "Walk over there." He said, "I believe that the rear door was sticking at the time and I could not get out so I had to climb through the front right door to get into the back and get out the same way, from the back to the front"; so he got to the car and opened the door on the left side, the

rear door, and he went in and he could not open the rear right door, so he comes back to me and he said, "That is definitely the car."

Q. Did he say anything else besides "That is definitely the car"? A. I don't remember now. He said, "That is definitely the car", he said that he was in, that was used in the case.

Q. What else did he say about the case; anything?

1928 The Court: Officer, now turn around and face me. I am going to speak to the Officer in a voice that is not audible to the jury.

(The Court speaks to the Officer.)

(The Court requested the stenographer to come up before the Bench and dictated the following on the record: "I have just instructed the Detective that if he had any conversation with Malinsky, and Malinsky involved the names of the other defendants, that he should omit reference to the names of the other defendants.)

1929 The Court: Would you gentlemen like to hear what I said to the stenographer. Any counsel may come up and have the stenographer read what I have just put on the record.

(Mr. Geoghan, Mr. Carabba, Mr. Solovei and Mr. McGough appear before the Bench and the stenographer read the above to the respective counsel not in the hearing of the jury.)

(The following was had in the presence of the jury.)

Mr. McGough: Will you repeat the last question, please? And will you listen to it?

(The question was repeated by the stenographer as follows: "Q. What else did he say about the case; anything?")

Q. He said that was the car, you told us? A. Yes, that is right.

Q. Did he say anything else? A. He just said
1931 that that was the car that was used.

Q. When? A. On February 15th, in the killing of the policeman in Coney Island.

Q. Now were you down at Stillwell Avenue between Mermaid Avenue and Neptune on the night in question, February 15, 1941? A. I was.

Q. Did you see the same car there? A. I did.

Q. Now were you present at any time with this defendant Malinsky at West 12th Street and Surf Avenue? A. I was.

Q. What date? A. I think it was about 6 p. m. on October 25th. It was a Sunday—I think it was the 25th, on Sunday.
1932

Q. What year, please? A. 1943—no, 1942.

Q. Did you take the prisoner there? A. I did not get you.

Q. Did you take Malinsky there at that time? A. I did.

Q. Where did you start out from? A. We started from down town, the Hotel Bossert.

Q. Tell us where you started from. A. We started from down town, the Hotel Bossert in Brooklyn, and we proceeded and we went to Prospect Park. We entered Prospect Park, and all the way down Ocean Parkway.

Q. Who directed the chauffeur? A. In an automobile, and Malinsky directed the chauffeur as to what he wanted done. We went through Ocean Parkway into Surf Avenue, as far as the Cosmo Restaurant, which is next to the Loew's Theatre.

Q. Which Loew's Theatre? A. In Coney Island, on Surf Avenue.

Q. And where? A. I believe 15th Street.

Q. Was it on the corner of Surf Avenue and Stillwell Avenue, the Loew's Coney Island Theatre? A. Yes, it was on the other side of Loew's Theatre, next to Loew's Theatre. 1934

Mr. Solovei: May I ask that this witness not be led?

The Court: Proceed.

By Mr. McGough:

Q. You say the Cosmo was next to the Coney Island Theatre? A. That is right.

Q. I am asking you where the Coney Island Theatre is? It is on Surf Avenue and what? 1935
A. I believe it is West 15th Street.

Q. Isn't it Stillwell Avenue? A. Stillwell Avennue; they call it.

Q. Now continue. A. They said that they parked the car there.

Q. What did Malinsky say? A. He said that he parked the car there and went into the restaurant to have coffee. They came out and they proceeded to West 12th Street and went towards the boardwalk. They turned around and parked the car just a little ways down from the

1936 Brooklyn Trust Company which is located on the corner of West 12th Street. After they were there, they waited.

The Court: Do you want to go any further than that?

Mr. McGough: No, I think that is enough for the time being.

The Court: Proceed.

1937 By Mr. McGough:

Q. Just answer this, Yes or No. Did he tell you some of the things of what happened in Coney Island? A. He did.

Q. With reference to himself and some others? A. He did.

Q. Were you present when this defendant Malinsky marked a hat which is now marked in evidence People's Exhibit 14? A. I was.

Q. And were you there when he said he got that hat from Harry Levine?

1938 Mr. Solovei: I object to the question.

The Court: Yes, it is leading.

Mr. McGough: I will reframe the question.

The Court: Proceed.

By Mr. McGough:

Q. At any time did you hear Malinsky mention Harry Levine's name in connection with a hat?

Mr. Solovei: I object to the question.

The Court: Objection overruled.
Mr. Solovei: Exception.
The Witness: I did.

Q. Now did you make an investigation, Detective Celano, to ascertain the whereabouts of Harry Levine? A. I did.
Q. What did your investigation reveal?

Mr. Solovei: I object to it.
The Court: I take it that you are trying to account for the failure to produce the witness? 1940
Mr. McGough: Yes, the nonappearance of a witness.
The Court: Objection overruled.
Mr. Solovei: I object to it upon the further ground, if your Honor pleases, that there is no foundation laid by this witness that he ever knew any Harry Levine or the Harry Levine more particularly who was the owner of this particular hat.
The Court: Objection overruled. 1941
Mr. Solovei: Exception.
The Witness: We went to visit Harry Levine's sister.
Mr. Solovei: I object to it.
The Court: Objection overruled.
Mr. Solovei: Exception.

By Mr. McGough:

Q. Don't give us any conversation, please. A. We had a conversation with her and she said—

1942 *Charles P. Celano—For People—Direct*

Mr. Solovei: I object to it.
The Court: Objection overruled.
Mr. Solovei: Exception.

By Mr. McGough:

Q. I said, don't give me any conversation.

The Court: I will let you show the conversation about the whereabouts of Levine.

1943

By Mr. McGough:

Q. All right. A. She stated that her brother is in the United States Army and at the present time is stationed in England.

Q. Now since the month of June have you continued your investigation to ascertain whether Levine is still in England? A. We have, sir.

Q. And tell us what you have done and what you have seen, if anything, please. A. We fur-

1944 ther learned—

Mr. Solovei: I object to this line of testimony, if your Honor pleases, upon the ground that there is no testimony here by anybody that the Harry Levine is the person who was the owner of this hat or is the same Harry Levine that we are talking about during the course of the trial.

Mr. McGough: I will supply that information, Judge, at this time.

The Court: Proceed.

Mr. McGough: May I have this marked for identification?

The Court: Yes.

(Paper received and marked People's Exhibit E for Identification.)

By Mr. McGough:

Q. I show you People's Exhibit E marked for identification and ask you if that picture was shown to Morris Malinsky by Mr. Heffernan in your presence on October 27, 1942, at the 62nd Precinct? A. It was. 1946

Q. And that bears a certain number, 139650, does it? A. That is right.

Q. Did you hear Mr. Heffernan question this defendant with respect to that picture? A. I did, sir.

Q. Will you tell us what Mr. Heffernan said and what, if anything Malinsky said with respect to that picture marked People's Exhibit E for Identification? 1947

Mr. Solovei: May I get the time and place, please?

Mr. McGough: I just gave you the time.

Mr. Solovei: What date was it and where?

By Mr. McGough:

Q. I asked you if this was on October 27th

1948

at the 62nd Precinct, is that right? A. That is right.

Q. Will you answer my question? A. Mr. Heffernan showed Malinsky the photograph and he said, "That is Harry Levine. I borrowed a hat—Harry Levine gave me the hat" that we found and he marked it for identification at the time in the Precinct.

1949

Mr. McGough: May I offer that in evidence, please?

The Court: Mark it.

(Photograph received and marked People's Exhibit 15.)

Mr. McGough: I would like to read one thing from the exhibit, Judge.

The Court: Yes.

Mr. McGough (reading): New York, Police, 139650; 11/15/37.

1950

By Mr. McGough:

Q. That is a police photograph, is that right? A. That is right.

Q. And of course being a police photograph, there are certain records over in Headquarters, of the man whose picture is on that particular exhibit? A. That is right.

Q. Now in the course of your investigation, you had addresses of this man, did you not? A. Yes, sir.

Q. I asked you a little while ago; did your investigation continue on down through the month of June, this month? A. Yes, sir.

Q. And can you tell us what your investigation showed with respect to the present whereabouts of this young man?

Mr. Solovei: I object to it.

The Court: On what ground?

Mr. Solovei: Upon the ground that the proper foundation was not laid yet.

The Court: In what respect?

Mr. Solovei: In respect that the picture that he evidently showed this witness 1952
is an old photograph taken at Police Headquarters.

The Court: How do we know it is old? How do we know how recent it is?

Mr. Solovei: All the more reason why I object to it.

The Court: What is your point?

Mr. Solovei: That the proper foundation has not been laid to show that this witness knows what Harry Levine he is talking about.

The Court: In what respect? 1953

Mr. Solovei: I don't intend to tell the District Attorney how to present the facts.

The Court: I want to know the point of your objection.

Mr. Solovei: I say in my opinion that they have not laid a proper foundation.

The Court: In what respect?

Mr. Solovei: That is my opinion. That is why I object.

The Court: Have you any grounds to state why you object?

Mr. Solovei: I have no further grounds to state.

The Court: Objection overruled.

Mr. Solovei: Exception.

The Court: That is the sole basis of your objection, that the picture has not been properly identified as being the man named Harry Levine, whom the defendant is alleged to have spoken about?

Mr. Solovei: And also that it comes within the purview of the confession that I objected to before just mentioned.

The Court: That has been admitted.

Mr. Solovei: I say that this is just part of the objection; also upon the ground that it is incompetent, immaterial and irrelevant, and not binding upon the defendant Malinsky.

The Court: Objection overruled.

Mr. Solovei: Exception.

The Witness: The investigation was further conducted and I spoke to the sister and the sister said that her brother is at present confined to some hospital in England somewheres; she did not know where.

Mr. Solovei: I move to strike the answer out.

The Court: Motion denied.

Mr. Solovei: Exception.

Q. Of what date?

By the Court:

Q. Did you show the sister this picture? A. I did.

Q. Did she identify this picture as being of her brother Harry Levine? A. Yes, sir.

The Court: Proceed.

By Mr. McGough:

Q. What date was that, please, that she had received that word? A. I think we had that talk with her on May 17th.

Q. Not the time you had the talk with her; what time did she tell you she received that word as of what date he was in England? A. Some date in May and as recently as this past week I think. 1958

By the Court:

Q. Have you got the address of the sister? A. Yes, sir.

The Court: Bring her here. Go out and bring her in.

Mr. McGough: Your witness. 1959

*Cross-examination by Mr. Solovei:*

Q. I understood you to say that the conversation you had with respect to the car was October 25, 1942? A. That was the night we went to the garage; I believe on Monday night.

Q. I am asking you a question. A. Yes, that is right.

Q. And you said that this conversation was had at the Hotel Bossert? A. Oh, no.

Q. Where was it that he told you that this car,

1960 using your language, was definitely used in the Fox case? A. In the Meeker Street garage.

Q. You left from the Hotel Bossert, is that correct? A. That is right.

Q. When you left, was the Assistant District Attorney there, Heffernan? A. He was.

Q. That is Sunday, October 25, 1942, is that correct? A. Is that going to the garage?

Q. Was he there at the Hotel Bossert before you left? A. You mean, going out to Coney
1961 Island, Counselor? Now, there is a couple of dates there. You mean going down to Coney Island? Yes, that was a Sunday night.

Q. You went to Coney Island on Sunday night? A. That is right.

Q. Was the Assistant District Attorney at the Hotel Bossert before you left for Coney Island? A. I don't recollect whether we picked him up or he was there.

Q. Did he go along? A. He went along with us.

Q. And did the stenographer go along, too,
1962 from the District Attorney's office? A. I believe he did.

Q. And you took Malinsky down to Coney Island and he told you something about being in the Cosmo Restaurant and where he parked the car, is that right? A. That is right.

Q. And did he tell you that while you were in the automobile after leaving Coney Island, or did he tell you that while you were on the sidewalk talking to him? A. No, he took us right to the restaurant. He said, "This is the restaurant we had coffee."

Q. Did the stenographer take down what was said? A. I don't think so.

Q. Did Mr. Heffernan order the stenographer to take down what was said? A. I don't believe he did.

Q. Well, there were other conversations had there that you thought were of importance, did you not? A. The statement was taken later I believe at the Precinct.

Q. I mean at that particular time while you were there at the Coney Island scene of the al- 1964
leged crime, did Mr. Heffernan tell the stenographer to take down what Mr. Malinsky said to him? A. I don't know what Mr. Heffernan instructed the stenographer to do.

Q. Was there a conversation that you related to what transpired in Coney Island; the conversation between you and the defendant or between you and somebody else? A. That is a conversation that was held in the car that Malinsky directed the chuaffeur in the car to proceed and he would tell him the route that he took. 1965

Q. I am talking about when you were in Coney Island? A. That is right.

Q. You got out of the car, didn't you? A. Yes, sir.

Q. Malinsky got out of the car? A. Yes, sir.

Q. And he showed you the Cosmo Restaurant? A. Yes, sir, that is right.

Q. When he showed you the Cosmo Restaurant, Mr. Heffernan was there? A. That is right.

Q. And how many other detectives were there? A. There were three or four others, I believe.

Q. Was he talking to you in the presence of all the three or four others, or was he talking to you privately? A. No, he was talking in general; everybody was there.

Q. Now I again ask you while he was talking to you in the presence of Mr. Heffernan, did he order the stenographer to take down what he said? A. I could not tell you what Mr. Heffernan ordered the stenographer. I don't know what Mr. Heffernan ordered the stenographer to do.

Q. You were about to say you were not there? A. I was not there where?

Q. You were just about to say, "I was not" what? A. No, no, I could not tell you what Mr. Heffernan done with the stenographer.

Q. You were standing right there near Mr. Heffernan? You were all grouped together? A. No, we were not grouped together.

Q. Well, did you see Mr. Heffernan or the stenographer make a note of everything that was said by Malinsky or anything that was said by Malinsky? A. I could not speak for Mr. Heffernan. I know I made my own.

Q. Did you make it in writing? A. No, I did not. I have a report made out.

Q. You mean, a report in writing? A. Yes, it is for the Police Department records.

Q. You mean a DD4 or 5 report? A. I guess so; that is what we make out.

Q. You guess so? A. The DD5.

Q. Did you incorporate all of this conversation in the DD5 report? A. It is a synopsis of a conversation. The stenographer took a state-

ment down and he put on there; Mr. Heffernan's man has got it. I don't know what he put there.

Q. You say the stenographer did take that down? A. I don't know what Mr. Heffernan ordered him to take down. I made my own report out.

Q. You are a detective? A. Yes, sir.

Q. Did he take anything down? A. I could not tell you what he took down.

Q. A minute ago you said he took something down? A. I didn't say it. I said I don't know 1970
what Mr. Heffernan ordered the stenographer to take down.

Q. May I ask that the previous question of the witness be read. Tell us whether or not the stenographer took down what he said. In other words, Mr. Celano, the stenographer took something down but you don't know just what it was? A. I was not directing the stenographer to do anything. That was Mr. Heffernan's stenographer.

Q. I didn't ask you that. Won't you please answer the question? A. I am answering it. 1971

Q. Did you incorporate everything of your conversation with Malinsky on October 25th at Coney Island in the DD5 report? A. As much as I have in there.

Q. Did you make a DD4? A. No, I did not.

Q. Did you make out a report known as M14? A. I don't know of any M14.

Q. Is there a report known as a 149, Form 149? A. If there is, we don't use it in my squad.

Q. Is that the only DD5 report that you made out? A. No, there are several of them, I guess.

Q. I am talking about you; did you make out

any other DD5 reports other than that? A. Yes, sir.

Q. Did you make out your report the same day or the next day? A. That I could not tell you. The report will speak for itself.

Q. Now you went to the garage the same day? A. What same day, do you mean?

Q. On October 25th, or was it the next day? A. That was on Monday. I went to the garage the next day.

Q. October 26th? A. It was the next day.

Q. That is, October 26th, you went to the garage? A. I believe it was.

Q. And while at the Hotel Bossert, these pictures here of this automobile, they were at the Hotel Bossert, weren't they? Well, I will show you one of those pictures known as People's Exhibit 11. Did you see that picture at the Hotel Bossert? A. I don't know; it might have been down there.

Q. You had pictures at the Hotel Bossert? A. We had plenty of pictures of the automobile on the night of the crime.

Q. And when Malinsky was there, pictures of the automobile were shown to him, weren't they? A. That I could not tell you.

Q. Didn't you show him some pictures of the automobile? A. I didn't show it to him.

Q. Do you know whether pictures were shown to him by others? A. I couldn't tell you that.

Q. Who went with you to the Meeker Avenue Garage? A. I think it was Detective McNally; John McNally.

Q. And do you remember when you or Detective McNally told him to try to open the door of

the car? A. I did not tell him to try it. I said, "Go over to the car and look it over."

Q. Do you remember when he took a handkerchief out of his pocket? A. I do.

Q. And do you remember when he tried the knob of the car and put his hand on the handle of the car with a handkerchief in his hand? A. That is right.

Q. And do you remember either you or McNally said to him, "what is the idea of using a handkerchief?" Do you remember that? A. 1976
Yes, I said that to him.

Q. And do you remember the defendant telling you, "What do you think I am going to do; put my hand on the knob of the door and leave my fingerprints there? I did not commit the crime and know nothing at all about the crime and that is why I am using a handkerchief." A. No, he said, "Us fellows in this kind of business got to be very careful not to touch anything and we always use a handkerchief to wipe it off"; that is what he said.

Q. He said he has got to be very careful; we 1977
have to be— A. "Us fellows in this kind of business got to be careful. We used to wipe it off with a handkerchief."

Q. He put his hand on the handle with a handkerchief before he touched it, when he tried the knob? A. That is right.

Q. And as a matter of fact, now, Celano, didn't he say to you or to McNally, that you heard him say, "The reason why I am using my handkerchief is because I do not want no prints on this handle. I did not commit the crime and

1978 I know nothing at all about the crime"? A. No, no, sir.

Q. Weren't there some words to that effect? A. Not to that effect at all.

Q. Was Heffernan over at the garage? A. No, sir.

Q. Was Mr. Heffernan over at the hotel on Monday when you left for the garage? A. I did not leave from the hotel.

Q. Where did you leave from? A. The 62nd
1979 Precinct.

Q. Was Mr. Heffernan at the 62nd Precinct when you left for the garage? A. I think he was.

Q. What time was it that you left for the garage? A. It might have been around 7 o'clock.

Q. In the evening? A. Yes, it was raining like the deuce.

Q. What time did you come back? A. It may have taken an hour or two; I am not sure. I know we returned to the 62nd Precinct.

Q. And before you left for the garage, the
1980 defendant was in the squad room or detectives' room of the 62nd Precinct, is that correct? A. I believe he was.

Q. And he was there being interrogated by Assistant District Attorney Heffernan, isn't that correct? A. Well, he was in there. Now I couldn't tell you whether he was being interrogated at the time or not. I know he was there.

Q. You were there? A. Yes.

Q. And you were in the room? A. Yes.

Q. And you could tell whether the man is asking another man questions? A. Yes, sir.

Q. You saw a stenographer there from the

District Attorney's office, didn't you? A. Yes, sir.

Q. And you saw Mr. Heffernan there, didn't you? A. Yes, sir.

Q. There was a table and a desk there, and chairs? A. Yes, sir.

Q. And isn't it a fact that the defendant was seated near this table where Assistant District Attorney Heffernan was and the stenographer was taking down the questions and answers that were propounded to the defendant Malinsky? A. 1982
I said I could not tell you whether he was questioning him at that time, but he did question him later.

Q. Didn't he question him right then and there while you were there and before you left for the Meeker Avenue garage? A. I couldn't tell you that. He was questioned all right but I could not tell you when.

Q. How long was Heffernan sitting in the room with the defendant before you left for the Meeker Avenue garage? A. I could not tell you that either.

Q. Would you say it was over an hour? A. I 1983
could not tell you.

Q. Can you give us the approximate time; your best guess at it? A. I could not tell you because there was a lot of other things to do there and I was doing them.

Q. Can't you give us any other guess at all? A. No, sir.

Q. You remember the conversations in detail, don't you? A. Yes, sir.

Q. But you cannot remember how long Heffer-

nan and the stenographer and Malinsky were in the room together? A. No, sir.

Q. You cannot give the slightest intimation to this jury? A. No, I don't know how long he was there.

Q. When you came back from the Meeker Avenue garage, you brought him into the same room that he was before, is that correct? A. It was one of the rooms there.

Q. Wasn't it the same room? A. Where the
1985 questioning was?

Q. Yes. A. I believe it was, yes, sir.

Q. And the Assistant District Attorney Heffernan was there? A. That is right.

Q. And the stenographer was there? A. That is right.

Q. And a number of detectives were there? A. That is right.

Q. And then the Assistant District Attorney Heffernan again asked you questions? A. That is right.

Q. You saw him then ask questions? A. That is right.

1986 Q. And the stenographer was there and he took down those questions and answers? A. Yes, sir.

Q. And how long was that questioning going on? A. I could not tell you that either.

Q. You were very much interested, were you not, as to what was going on? A. Yes, but I could not tell you how long it took or anything.

Q. Can't you give us an idea, an approximate idea, whether he examined Malinsky for one hour, two hours, or three hours? A. I could not tell you.

Q. Did you get back around nine o'clock from the Meeker Avenue garage. You said it was about two hours? A. I said approximately; it might have been; I don't know.

Q. Approximately about 9 o'clock? A. Yes, maybe.

Q. From 9 o'clock on until what time; would you give this Court and jury an approximate idea, that Mr. Heffernan was examining Malinsky? A. Mr. Solovei, I don't know. I had a lot of other things to do. I don't know how long 1988
Malinsky was in there.

Q. Would you say he was there until 12 o'clock at night? A. I could not tell you.

Q. What time did you leave the Bath Beach Station House that night or that morning? A. I don't know; it was quite late.

Q. Did you leave after 12 o'clock? A. Yes, it was quite late.

Q. Won't you please tell me; did you leave at 12 o'clock or after? A. I don't remember, Counsel.

Q. Was Mr. Heffernan there when you left? 1989
A. I don't remember that either.

Q. Did Mr. Heffernan leave ahead of you? A. I don't remember that either. I had a lot of other things to do besides watching Mr. Heffernan.

Q. I know you are a busy man. There is nothing that you want to withhold from this jury? A. Nothing at all.

Q. Won't you please tell us now whether or not Mr. Heffernan left before or after you did? A. I could not tell you; I don't remember.

Q. Was there any questioning going on after

one o'clock in the morning? A. It might have been; it might have been. I don't remember.

Q. Was there any questioning going on after two o'clock in the morning? A. I don't remember, Counselor.

Q. Whom did you go home with that night or that morning? A. That I don't remember.

Q. How did you go home? A. With my car.

Q. Your own car? A. Yes.

Q. Anybody ride in the car with you? A. I
991 don't remember.

Q. You don't remember whether any detective rode in the car with you? A. Well, I don't know. It might have been somebody else with me or not; I don't know.

Q. It could not be Malinsky? A. Unless he was out. I don't know. He could not have been out.

Q. Unless he was out? A. Yes.

Q. You mean to tell this Court and jury that you cannot with positiveness say that it was not Malinsky that was the person that went with
992 you? A. Counselor, I went home. I don't know who I went home with. There are several detectives there to go home with. I don't know.

Q. When you came back on the 25th of October, 1942, and you say Malinsky pointed out some of the places in Coney Island, Heffernan and the stenographer and all of you were together, weren't you, in the car? A. That is right.

Q. Did you go back to the Hotel Bossert? A. No, I did not.

Q. Did you take Malinsky back to the Hotel

Bossert? A. I don't think so. We were together.

Q. Where did you take him to on the 25th? A. I don't remember whether it was the Hotel Bossert or it was down there. I don't remember.

Q. Down where? A. Down the 62nd Precinct.

Q. You know, don't you, that he was not at the 62nd Precinct? A. It may have been the Hotel Bossert.

Q. I say, don't you know that he was not at the 62nd Precinct until the afternoon of the 1994
26th? Don't you know that? A. He might have been.

Q. He might have been? A. That is right; in the afternoon.

Q. So that when you left Coney Island in an automobile all of you together, you took him back to the Hotel Bossert, didn't you? A. I think we did, yes, that is right.

Q. You only think you did? A. That is right.

Q. And the stenographer and Heffernan and all of you went back to the Hotel Bossert, isn't that right? A. That is right.

Q. Now when you went back to the Hotel 1995
Bossert with Malinsky, did Mr. Heffernan sit down with the stenographer and interrogate Malinsky as to what transpired in Coney Island? A. I don't remember that because I went out right after that.

Q. What time did you get back from the Coney Island trip to the Hotel Bossert? A. I don't remember the time, Counselor.

Q. What time did you leave the Hotel Bossert; you? A. I left with them all.

1996

Q. I am talking about at night; what time did you leave after you brought him back? That I could not tell you.

Q. Whom did you leave with at the Hotel Bossert? A. I could not tell you that either.

Q. Did you have your car with you that day? A. I think I did.

Q. Did you drive away? A. Yes.

Q. Do you know whether you left at night or in the afternoon? A. I could not tell you, Coun-

1997

selor. We were so busy, I could not tell you what time we went away.

Q. All the other police officers were busy, too? A. Yes. I guess they were.

Q. How long have you been on the detective force? A. About 18 years.

Q. You are attached to the Homicide Squad? A. That is right.

Q. Is that right? A. That is right.

Q. You have testified in a great many cases, haven't you? A. I have.

Q. You have had a lot of experience in testify-

1998

ing, haven't you? A. Yes.

Q. And you have had a lot of experience in preparing cases for trial, isn't that so? A. That is right.

Q. And ordinarily you have a pretty good memory, haven't you? A. I think so.

Q. And ordinarily, you remember pretty good everything that transpires, don't you? A. That is right.

Q. Is this one of the times in your life that your memory has failed you? A. My memory has not failed me, Counselor.

Q. Is that the best answer you can give this

Court and jury, "I don't remember" to the questions I propounded to you?

Mr. McGough: That is objected to.

The Court: Objection overruled.

The Witness: Will you repeat your question, please?

Mr. Solovei: Will the stenographer please repeat it?

The Court: Repeat the question.

(The question was repeated by the stenographer.) 2000

The Witness: Well, I remember the important parts of the thing. I do not remember anything that is not of importance.

By Mr. Solovei:

Q. You remember the important parts of it, is that right? A. That is right.

Q. You remember those parts of the conversation or the happenings that you believe will assist the prosecution in making out a case against Malinsky, is that correct? A. No, sir. 2001

Q. When was the first DD5 report that you made out in this case? A. Around February 16th or 17th of 1941.

Q. That was when you first started investigating the case? A. That is right.

Q. Were you at the Hotel Bossert on October 23, 1942? A. I think I was.

Q. What time were you there? A. I don't remember the time but I am pretty sure I was there.

2002 Q. Were you there in the morning? A. I don't remember, Counselor.

Q. Well, could you tell us whether you were there before 12 o'clock in the morning of October 23, 1942, at the Hotel Bossert? A. I don't remember. I may have been there and I might have been out but I am pretty sure I was there.

Q. You are pretty sure you were there in the morning, is that right? A. I didn't say in the morning. It was some time during the day.

2003 Q. When you say "some time during the day", would it be fair to assume that you were there at least we say from 9 o'clock in the morning up to 4 o'clock in the afternoon? A. No, it might have been in the night. It may have been in the morning and until the night but I don't remember.

Q. I am asking you—

The Court: He said he does not remember. Proceed to something else.

2004 Q. Is there any reason for you not to remember? A. No, there is no reason, Counselor.

Q. Do you think you got there at night? A. I just told you I didn't remember. I might have been there early in the morning; I don't know.

Q. If you were there on October 23rd in the morning, could you tell this Court and jury just how Malinsky was dressed, if you were there?

The Court: He said he does not know if he was there in the morning.

Mr. Solovei: I am asking him, could he tell.

The Court: He said he does not know when he was there.

By Mr. Solovei:

Q. I will repeat the question. When you got there on October 23, 1942, can you tell us how Malinsky was dressed? A. Yes, at one time I could tell you, he had his clothes off.

Q. All his clothes off? A. No, he had his underwear on. 2006

Q. Did you talk to him that morning or that day, the 23rd? A. No, I did not have much to say to him.

Q. Did you see Assistant District Attorney Heffernan there? A. I don't believe I did; not when I was there.

Q. Who were the police officers that you saw there when you were there on the 23rd? A. Lieutenant McNally was there; Detective Lowe; and I don't know who else was there. I know myself.

Q. Yourself? A. Yes; at this particular moment. 2007

Q. Was Detective McNally there, the brother of the Lieutenant? A. I don't remember whether he was there or not, but I know Lieutenant McNally was there.

Q. Was Detective Bell there? A. He might have been; I don't remember.

Q. Captain McGowan there? A. No, sir.

Q. Acting-Captain Dowdell? A. No.

Q. Were you there at the Hotel Bossert on the 24th? A. I believe I was there, yes.

Q. And do you know what time you got there

on the 24th? A. That I could not tell you either.

Q. Was it in the morning or afternoon, do you think? A. Well, it might have been in the morning. We ran in and out of the place all day long.

Q. Did you see Assistant District Attorney Heffernan there on the 24th? A. I don't remember.

Q. Did you see him there on the 25th at the
2009 Hotel Bossert? A. He was thereabouts, but I don't remember what date he was there.

Q. Did you see him there every day that you were there? A. No, I did not say that.

Q. When you came back from the Meeker Avenue Garage to the Bath Beach Station, the 62nd Precinct, did you give in writing the conversation had between you and Malinsky to Assistant District Attorney Heffernan? A. I did not.

Q. Did you give him a report of the conversation? A. Not in writing. He took a statement from Malinsky.

2010 Q. Did you give it to him, I am asking? A. No, not in writing.

Q. Did you make out anything for the convenience of Mr. Heffernan so that he might examine Malinsky? A. No, no, he took a statement from Malinsky, I think.

Q. But you gave him nothing? A. I did not.

Q. You just came back with Malinsky? A. Yes.

Q. Brought him back into the 62nd Precinct? A. Yes, sir.

Q. Put him into the squad room where Assis-

tant District Attorney Heffernan and the stenographer was there? A. Yes.

Q. And you gave him no information about what transpired at the Meeker Avenue Garage? A. Not in writing.

Q. Not in writing? A. No, sir.

Q. Did you talk to him? A. No.

Q. Did you talk to him right in the presence of everybody? A. I talked to him and he took a statement from Malinsky.

Q. Did you talk to him in the presence of 2012
everybody? A. I don't remember whether I did or not. I cannot tell you who was there in the room at the time.

Q. As a matter of fact, you don't remember whether you talked to him, is that right? A. I believe I talked to him.

Q. You think you talked to him? A. I had to give him a report on what happened.

The Court: Anything further?

Mr. Solovei: I don't think so.

The Court: Step down. Is there any 2013
cross-examination by other counsel?

Mr. Geoghan: No questions on behalf of Indovino.

Mr. Carabba: None on behalf of Rudish.

2014 *Lt. James McNally—Recalled for People—Redirect*

LIEUTENANT JAMES McNALLY, recalled as witness for the People, testified as follows:

*Redirect examination by Mr. McGough*:

Q. You told us, Lieutenant, that you handled the investigations of this particular case? A. I did.

Q. Now at the time that Malinsky was at the Hotel Bossert, was he given anything to eat? A.
2015 Yes, sir.

Q. And was he given an opportunity to rest? A. Yes, sir.

Q. Can you tell us when it was that the defendant Rudish and also the defendant Indovino were brought in? A. I was not present when Rudish was brought in or Indovino. I know that we received a telephone call at the hotel at 5:40 that Indovino had been picked up.

Q. What date? A. The 24th.

Q. And how about Rudish? Can you tell us what date he was brought in? A. He was
2016 brought in on the 24th also but I was not there then either. That was a short time after Indovino.

Q. Did you have a talk with Rudish down at the hotel? A. I did.

Q. And did he answer your questions? A. Yes, sir.

Q. Did you question him about the night of February 15th, 1941? A. I did.

Q. What did he say? A. He said he knew nothing about it and he said he could prove that he was not connected with it. I said, "How could you prove that?" He said, "There was a man in Sing Sing who can prove that I had

nothing to do with it". I said, "Who is that man?" He said, "His name is David Yellin".

The Court: Is there any objection by counsel to this testimony?

Mr. Carabba: Conversation between this witness and the defendant Rudish?

The Court: Yes.

Mr. Carabba: I have no objection.

The Court: All right. 2018

Mr. Carabba: I cannot object to what Rudish said, but anything that Yellin said to him in the absence of the defendant Rudish, I am going to object to.

The Court: Yes, proceed, Mr. McGough.

By Mr. McGough:

Q. Rudish said, "There is a man in Sing Sing that can prove I was not there?" Is that right? A. That is correct.

Q. Was the word "alibi" mentioned? 2019

Mr. Carabba: I submit—

Mr. McGough: If there is any objection, I will withdraw it.

The Court: Proceed.

By Mr. McGough:

Q. Is that the first time Yellin's name was brought into the investigation? A. That was.

Q. What did you do, then, please? A. Then I notified—

2020 *Lt. James McNally—Recalled for People—Redirect*

Mr. Carabba: I object to what he did as not binding on the defendant Rudish.

The Court: Objection sustained.

By Mr. McGough:

Q. Did you have Yellin brought down and face Rudish after that conversation?

Mr. Carabba: I object to it as incompetent, irrelevant and immaterial, and not
2021 binding on Rudish, as to what he did.

Mr. McGough: This is very competent. I have a right to show—

The Court: Now, do not say what you have the right to show. Come up here at the bar and tell me not in the presence of the jury and I will determine whether you have the right to show it.

(Mr. Carabba and Mr. McGough appear before the Bench with the stenographer not in the presence of the jury.)

Mr. McGough: I propose to show that
2022 Rudish when he was questioned by the Lieutenant, when he was brought in, said that he had an alibi for that night, that he was with a fellow who is in Sing Sing and if you speak to that fellow, David Yellin, he will tell you he was out with him. I intend to show that this witness then ordered Yellin brought down and spoke to him within the hearing of Rudish and found that Rudish was lying.

The Court: Oh, no.

Mr. McGough: And that Yellin told the same story that he told here at the trial.

The Court: Oh, no.

 2023

Mr. McGough: This is being offered to show that up to that point nobody else mentioned—

The Court: I will not permit you to show that he had an independent private conversation with Yellin.

Mr. McGough: You misunderstand me, your Honor. I do not mean that I am going to have this witness show the conversation between Yellin and him, but I 2024 intend to have, with the Court's permission, to prove that when Rudish and Yellin faced each other, that Rudish then shut up; when he saw that Yellin did not back him up, he refused to do any talking at all.

The Court: I will not permit you to show that. You are skating on pretty thin ice, Mr. McGough.

Mr. McGough: I think I proved that Yellin was brought in through Rudish.

The Court: I will let you prove that, but I will exclude the rest.

Mr. McGough: I think I have a right 2025 to show that they brought Yellin down after that. That is the objection.

The Court: You mean you want to show that Yellin was in the same room with Rudish and he was brought down, and was in the same room with Rudish?

Mr. McGough: Yes.

The Court: That is all I will let you show. I will not let you go any further than that.

Mr. McGough: And also that was the first time—

2026 *Lt. James McNally—Recalled for People—Redirect*

The Court: Remember, when this man is under arrest, he is under no duty to speak, and if he is spoken to, he does not have to reply, and his failure to reply cannot be used against him.

Mr. McGough: And if he puts forth an alibi and that alibi is false—

The Court: You have already attempted to show during the direct examination
2027 of Yellin, who testified from the witness-stand as to that and you cannot go any further than that.

(The following was had in the presence of the jury.)

Mr. McGough: Is there any objection to the pending question?

Mr. Carabba: I object to it as incompetent, irrelevant and immaterial.

The Court: Objection as to the form of the question is sustained.

2028 By Mr. McGough:

Q. At the time Rudish told you that, did you check to find out if Yellin was in Sing Sing? A. Yes.

Mr. Carabba: Of course it is leading, but it is all right.

The Court: Go ahead.

By Mr. McGough:

Q. Was there a time when Yellin was brought from Sing Sing and was put in the same room with Rudish? A. On the 26th.

*Lt. James McNally—Recalled for People—Recross* 2029

Mr. Carabba: Of course that is leading.

The Court: Objection overruled.

Mr. Carabba: Exception.

The Witness: On the 26th of October.

By Mr. McGough:

Q. In other words, how much time elapsed between the time that Rudish said he had this man who could prove he was innocent— 2030

Mr. Carabba: I object to the form of the question as highly improper.

The Court: Objection overruled.

Mr. Carabba: Exception.

The Witness: He told me that on Saturday night. Of course we could not bring him down and get a Court order until Monday. He was brought down Monday.

By Mr. McGough: 2031

Q. And that was done? A. Saturday was the 24th and Monday was the 26th.

Q. And when was Rudish formally booked and charged with this crime? A. The 27th.

Mr. McGough: All right; that is all.

*Cross-examination by Mr. Solovei*:

Q. Lieutenant, were you in the automobile when you drove to Coney Island with the defendant Malinsky and Celano and other detectives? A. I was.

2032 *Lt. James McNally—Recalled for People—Recross*

Q. And what route did you take to go to Coney Island? A. Well, I know—I think we come out of the park to Ocean Parkway.

Q. Didn't you go through Hicks Street? A. I don't recall.

Q. What? A. I don't recall.

Q. Didn't you go through Hicks Street over the Highway? A. I don't recall.

Q. Along Bay Ridge? A. I know that we hit
2033 Ocean Parkway. Where we hit Ocean Parkway, I am not positive about, but some distance from Coney Island.

Q. I know, but isn't it a fact that you took the Hicks Street Highway and went over the highway and you went along Shore Road down through Bay Ridge, isn't that so? A. I don't know. I don't recall.

The Court: Proceed, please.

Mr. Solovei: That is all.

The Court: Step down.

2034 Mr. Meadow: May I ask a few questions?

The Court: Yes.

By Mr. Meadow:

Q. Was Rudish in your custody on the 25th of October? A. Yes, that was Sunday.

Q. He was not free to go home at that time, if he so desired, was he? A. No, we were conducting an investigation.

Mr. Meadow: That is all.

Mr. Geoghan: No questions on behalf of Indovino.

2035

SAMUEL KOVNER, residing at Attica Prison, New York, called as a witness in behalf of the People, being duly sworn by the Clerk, Mr. Walling, testified as follows:

*Direct examination by Mr. McGough*:

Q. How old are you, Kovner? A. 29.

Q. And at the present time you are confined to the State Prison at Attica, New York? A. That is right.

2036

Q. Under a sentence of this particular Court? A. That is right.

Q. Was it Judge Leibowitz that sentenced you? A. Yes.

Q. You were convicted of robbery first, armed, is that right? A. I was.

Q. And your sentence from Judge Leibowitz here, when you went away, was how many years in State Prison? A. 15 to 30 years.

Q. 15 to 30 years? A. Yes, sir.

Q. You are serving that sentence now? A. I am.

2037

Q. Is that your first conviction? A. Yes, sir.

Q. Did you know a man named Abraham Beitler in his lifetime? A. Yes, sir.

Q. How long did you know Beitler? A. I knew Beitler for about 12 years.

Q. Were you with Beitler at the time he died? A. Yes, sir.

Q. Where was that, please? A. The Hotel Abbey, 51st Street and Seventh Avenue.

Q. The Hotel Abbey in New York City? A. Yes, sir.

Q. Do you know what date he died? A. October 28, 1941.

Q. Will you look at this picture and tell me if that is a good likeness of Beitler at the time he died? A. Yes, sir, that is him.

Mr. McGough: May I offer it in evidence?

Mr. Solovei: I object to it on behalf of the defendant Malinsky, and upon the ground that it is incompetent, irrelevant and immaterial.

The Court: Objection overruled.

Mr. Solovei: Exception.

Mr. Carabba: I make the same objection, if your Honor pleases, on behalf of the defendant Rudish.

The Court: Objection overruled.

Mr. Carabba: Exception.

Mr. Geoghan: Same objection for Indovino.

The Court: Objection overruled.

Mr. Geoghan: Exception.

The Court: It will be received and marked.

(Photograph received and marked People's Exhibit 16.)

Mr. McGough: Can I show it to the jurors?

The Court: Yes. It is just offered as a likeness.

Q. How old was Beitler when he died? A. 24.

Mr. McGough: At this time, may it please the Court, I offer a certified copy

of a death certificate of one Abraham Beitler, showing his death at 7th Avenue and 51st Street on the 28th day of October 1941.

Mr. Geoghan: I object to it on the ground there is no proof before the Court that the Abraham Beitler whose name appears in this death certificate is the same Abraham Beitler that is mentioned in the testimony of this witness.

The Court: That is purely cumulative. 2042

Mr. McGough: The indictment sets forth the three defendants on trial acting in concert with one Abraham Beitler, deceased.

The Court: Well, is there any question that he is dead?

Mr. Carabba: I am going to object to it, if your Honor pleases, on behalf of the defendant Rudish. They have not shown that this Beitler referred to in this picture and in this certificate of death here, this affidavit from the Board of Health, 2043 is the same Beitler mentioned in the indictment.

The Court: I guess there is some merit to that point, Mr. District Attorney.

Mr. McGough: I would like to have your Honor allow me to connect it up.

The Court: Surely.

Mr. McGough: May I have it marked?

The Court: Mark it for identification.

(Photograph received and marked People's Exhibit F for Identification.)

2044

By Mr. McGough:

Q. I don't know whether I asked you how long did you know Beitler? A. I knew Beitler for 12 years.

Q. And did you know him under any nickname? A. Yes, by the name of Ebbie.

Q. And this photograph, which is marked People's Exhibit 16, is that the Abe Beitler that you said died at the Hotel Abbey last October? A.

2045 Yes, sir.

Q. Now Kovner, do you know Joseph Indovino, the defendant on the extreme right? A. Yes, sir.

Q. How long do you know Indovino? A. Oh, since 1940.

Q. Did you know him by any other name than Indovino? A. Tiger.

Q. And the defendant Sidney Rudish; do you know him? A. Yes, sir.

Q. How long do you know him? A. About 13 years.

2046 Q And the defendant Malinsky? Do you know him? A. Yes, sir.

Q. How long a period of time? A. Eight years.

Q. Now do you know the date that Patrolman Leon Fox was killed in Coney Island? A. Yes, sir.

Q. What date was it? A. February 15, 1941.

Q. Now some time around that time, did you see Joe the Tiger and anybody else that is here on trial? A. Yes, I seen Tiger and Malinsky.

Q. And where did you see them, Kovner? A. I seen them on Attorney and Broome, about five days before the 15th.

Mr. Solovei: I object to it and move to strike the answer out.

Mr. Geoghan: I make the objection on the ground it is incompetent, immaterial and irrelevant, and not within the issues here.

The Court: We cannot tell this far. At this time I will overrule your objection.

Mr. Solovei: I except.

Mr. Geoghan: I except.

2048

By Mr. McGough:

Q. Now who was with Kovner at the time you saw Indovino and Malinsky at that place? A. I did not hear the question.

Q. Can you hear me at all? A. Now I can hear you.

Q. Who was with you when you saw Malinsky and Indovino at that time and place? A. Ebbie was with me.

Q. Ebbie who? A. Ebbie Beitler.

Q. Now was there a conversation amongst the four of you? A. Yes, sir. 2049

Q. What, if anything, did you hear Tiger Indovino say?

Mr. Solovei: I object to it on behalf of the defendant Malinsky.

Mr. Geoghan: I object to it.

By the Court:

Q. The conversation was had in the presence of the four? A. Yes, sir.

2050 *Samuel Kovner—For People—Direct*

Q. Name the four. A. Ebbie, myself, Tiger and Malinsky.

Q. Louder. A. Ebbie, myself, Tiger and Malinsky.

The Court: Objection overruled.

Mr. Solovei: Exception.

Mr. Geoghan: Exception.

Mr. Morritt: The defendant Rudish objects.

2051 The Court: Objection sustained as to Rudish.

Q. Now we are ready for the conversation. Tell us what was said, if anything. A. Tiger came down to speak to Ebbie; Tiger and Malinsky. Tiger said he had a piece of work and if Ebbie wanted to go on it; if Ebbie and I wanted to go on it, so Ebbie asked what the piece of work was. Tiger said it was a payroll in Coney Island. He said, "A cop goes with the payroll but he will give up if you put a pistol to his back."

2052

Q. Who said that? A. Tiger.

Q. Did you hear that? A. Yes, sir.

Q. Whom did he say it to? A. He said it to me and Ebbie.

Q. What else was said, and tell us who said it. A. After I pulled Ebbie on the side, I spoke to Ebbie privately.

Q. Before that, was any particular location or place mentioned?

Mr. Solovei: I move to strike out the answer on behalf of the defendant Malin-

sky on the ground that it is incompetent, irrelevant and immaterial, not binding on the defendant Malinsky, and highly prejudicial to the interests of Malinsky; this being some time prior to February 15, 1941.

The Court: He said it was five days before.

Mr. Solovei: That is right.

The Court: Objection overruled.

Mr. Solovei: Exception. 2054

Mr. Geoghan: Same objection as to Indovino.

The Court: Objection overruled as to Indovino. This testimony is received only as against Malinsky and as against Indovino, and it must be considered as against Rudish.

Mr. Solovei: I take exception to your Honor's statement.

By Mr. McGough:

Q. I asked you, was any place mentioned? A. 2055
Yes, sir; Coney Island.

Q. Who mentioned that? A. The Tiger.

Q. By the Tiger, you mean this defendant Indovino on trial? A. Yes, sir.

Q. Tell us what was said after that, please, and tell us who said it. A. I called Ebbie on the side. I said, "Excuse me a few minutes, I want to talk to Ebbie."

Mr. Geoghan: I object to this, that it is not in the presence of Indovino.

The Court: Objection sustained.

Mr. McGough: I submit this is in line with what developed with respect to Indovino; Judge; if it is in furtherance of any alleged conspiracy, I submit it is competent, and I offer it for that purpose.

The Court: Well, this is in a little different category from the testimony of Yellin, because if Yellin's testimony is to be believed, and that of course is always for the jury, Indovino and the other man, Beitler, were present when Beitler asked Yellin to carry the message to Slip Spielfogel. Now this is a little different proposition.

Mr. McGough: All right.

The Court: From that situation. You appreciate that, Mr. McGough?

Mr. McGough: Yes, I think your Honor is correct, after that explanation.

The Court: Proceed.

By Mr. McGough:

Q. Now Kovner, you told us that at that moment Ebbie took you aside, is that right? A. Yes, sir.

Q. Now without telling us what he said to you, did you and he talk for a second or two? A. Yes, sir.

Q. After that was over, what did the two of you do? A. Well, we went back to continue—Ebbie wanted to continue the conversation.

Q. With who? A. With Tiger and Malinsky.

2059

Q. And did you hear Ebbie say anything to Tiger and Malinsky? A. Yes.

Q. Tell us that, please. A. Ebbie said, "Are you going along?"

By the Court:

Q. To whom? A. To Tiger.

Mr. Solovei: I object to it and move to strike it out on behalf of Malinsky.

2060

The Court: Objection overruled.

Mr. Solovei: Exception.

By Mr. McGough:

Q. What did Beitler first say after he went back and joined the two that you have mentioned, Malinsky and Indovino? A. He said, "Sammy does not want to go."

Q. What? A. He said, "Sammy does not want to go."

Q. What else? A. He said, "Do you want to go along," to Tiger. He said, "Are you going, you, Malinsky and I, the three of us"—

2061

The Court: Who is Sammy?

The Witness: I was.

By Mr. McGough:

Q. Did he say anything else besides, "Sammy don't want to go"? A. He says that, "Sammy does not want to have anything to do with anything that has got a cop on it."

Q. He said that in your presence to Indovino and Malinsky? A. Yes, sir.

Q. Now what did Tiger say after that last conversation with Ebbie, "Did you fellows want to go"?

Mr. Solovei: I object to it on behalf of Malinsky.

The Court: Objection overruled.

Mr. Solovei: Exception.

2063 The Witness: Tiger said that he can't go; he is known and he can't go.

By Mr. McGough:

Q. He is known? A. Yes, he told Ebbie that he can't go; he is known down there.

Q. Down where? A. Down in Coney Island.

Q. Did Ebbie say anything else to that? A. Well, Ebbie made an appointment with them—Ebbie made an appointment with them at that time, and at that time he said, "I will look to see if I can get a third man to take along."

2064 Q. That was the first conversation with Indovino, is that right? A. Yes.

Q. Were you present at a second time when Beitler and Indovino had a talk? A. Yes, sir.

Q. And tell us about what date that was. A. That was about February 21st or 22nd.

Q. That would be after the Fox shooting? A. Yes, sir.

Q. And where did you see Indovino then? A. On Attorney and Broome.

Q. The same streets? A. Yes, sir.

Q. What did Indovino say at that time?

Mr. Solovei: I object to it on behalf of Malinsky.

The Court: Objection sustained.

Mr. Geoghan: Same objection.

The Court: Overruled as to Indovino.

Mr. Geoghan: Exception.

The Court: Objection sustained as to Rudish. This testimony is received only as against Indovino in this instance. Proceed.

By Mr. McGough: 2066

Q. Did you mean that that was about the 22nd or 21st? A. The 21st or 22nd.

Q. Will you give us the conversation then? A. He told Ebbie that he needs more money or he needs money, and spoke about different things. He did not speak about—strictly money or everything was referring to money.

Q. That conversation you say was with Indovino? A. Right.

Q. Who did he ask for money? A. Ebbie.

Q. Did he ask for any certain amount? A. 2067
Well, no, he just said he needed money.

Q. Now did you see Indovino after that? A. Ebbie made an appointment with him at that time for two days later.

Q. And where was the appointment for? A. Houston and Allen, in a bar and grill.

Q. What time of the day or night? A. About nine o'clock at night.

Q. And did Indovino keep that appointment, if you know? A. Yes, sir.

Q. Were you there? A. Yes, sir.

2068

Q. Who else was there? A. Just Indovino and Ebbie and myself.

Q. Now was there a talk with reference to what happened in Coney Island at that time? A. Yes, sir.

Q. Who started the talk first? A. Indovino did, the Tiger.

Q. What did he say? A. The Tiger did.

Q. What did he say?

2069

Mr. Solovei: I object to it.

The Court: Objection sustained as to Malinsky.

Mr. Carabba: I object.

The Court: Objection sustained as to Rudish.

Mr. Geoghan: Same as to Indovino.

The Court: Objection overruled as to Indovino. The testimony is received only as to Indovino.

Mr. Geoghan: Exception.

The Court: Proceed.

2070

The Witness: He said, "You are too fast." He says, "You got too hot. You did not have to shoot him. All you had to do was to put the gun up against his back." He said, "What did you shoot him for?" He was referring to the cop in Coney Island.

By Mr. McGough:

Q. Who said that? A. The Tiger.

Q. Did Beitler say anything then to Tiger Indovino? A. Beitler said, "I am on the lam.

I am hot and I won't stand for a cop identifying me."

Mr. Geoghan: I object to it as not binding upon the defendant Indovino, what Beitler said about being on the lam.

The Court: Objection overruled.

Mr. Geoghan: Exception.

By Mr. McGough:

2072

Q. Now did you see Indovino at any time after that, which was in the bar and grill? A. After the bar and grill?

Q. Yes. A. I seen him on Broome and Attorney.

Q. What was located at Broome and Attorney Streets? A. Well, it was just a corner. There was an empty store on the corner.

Q. Is that the place where you frequently hung out? A. Ebbie and I used to be there quite often, practically every day.

Q. Now you say you saw the Tiger there at another time, is that right? A. Yes, sir. 2073

Q. Can you fix the time and date, approximately? A. Between 8:30 and 9.

Q. What date? How much later after the bar and grill incident? A. Well, it was about February 27th or 28th. It was about three or four days after the bar and grill; about a week; between three and four days and a week.

Q. Now what did the Tiger say at that time and to whom? A. He told Ebbie if Ebbie made a score. He said, "I heard you made a score. I need money."

2074 Q. Did Beitler give him any money? A. No, sir.

Q. Now with reference to Morris Malinsky, did you see him in March of 1941? A. Yes, sir.

Q. Where did you see him? A. Well, he come over to my car.

Q. Your car? A. Yes, sir; at that time I bought a car, in March.

Q. Where was it parked? A. It was parked on Broome Street between Attorney and Ridge.

2075 Q. Did he say anything at that time with reference to February 15, 1941? A. Yes, sir.

Q. What did he say to you? A. Ebbie was there at that time.

Q. Beitler and you and Malinsky? A. That is right.

Q. Anybody else? A. No, just Beitler, I and Malinsky.

Q. And what did Malinsky say at that time? A. Well, Malinsky said something about the cop to Ebbie. He said to Ebbie, "I am on the lam." He said, "Somebody made me for it. Drive me over to Williamsburg right away."

2076 Q. Did he say anything else but "Somebody made me for it"? A. No, sir, "Somebody made me for it"; that is what he said.

Q. Did he say anything about the Fox case?

Mr. Solovei: I object to it.

Mr. Geoghan: I object to it as leading.

Mr. Solovei: I object to this line of testimony.

The Court: Objection overruled.

Mr. Solovei: The questions are highly improper.

The Court: Objection overruled.
Mr. Solovei: Exception.
Mr. Geoghan: Exception.

By the Court:

Q. What do you mean? Do you know the meaning of the phrase "made me for it"? A. Yes.

Q. What phrase is that, and where is that used? A. Somebody identifies me for something. 2078

Q. Where is that used commonly? A. It is used amongst hoodlums.

Q. Amongst hoodlums? A. Yes, sir.

The Court: Proceed.

By Mr. McGough:

Q. Did you give us all the conversation with Malinsky in the car in March 1941? A. Well, Malinsky at that time did not say very much outside of, "I am on the lam; drive me over to Williamsburg," but I see Malinsky five or six times after that and he was always talking about it. Everytime I seen him, he spoke about it. 2079

Q. Always talking about what, Kovner? A. About the killing in Coney Island.

Q. What is that? A. About the killing; about the cop.

Q. That was Malinsky? A. Yes.

Mr. McGough: That is all.
Mr. Geoghan: May we have a few

2080 minutes' recess before I start to cross-examine the witness?

The Court: Yes, Mr. Geoghan.

Mr. Geoghan: Thank you.

(The jury was duly admonished by the Court; and after a short recess the trial was resumed.)

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SAMUEL KOVNER, resumed.

2081

*Cross-examination by Mr. Geoghan:*

Q. Now, Kovner, you say you were convicted in this Court of the crime of robbery in the first degree, armed? That is correct? A. That is right.

Q. And that his Honor was presiding here, Judge Leibowitz? A. Yes.

Q. And he sentenced you for a term of from 15 to 30 years? A. Correct.

Q. Were you ever convicted of any other

2082 crime? A. No, sir.

Q. By the way, you were taken into custody in connection with this very case, were you not? A. No, sir.

Q. Weren't you ever brought in by the detectives who were investigating the Fox murder case? A. I don't believe so.

Q. Don't you know? A. I don't think so.

Q. You mean you don't know? A. I was never told I was brought in for that case.

Q. Were you ever brought over to the Bossert Hotel? A. Yes, sir.

Q. In connection with the Fox murder case? A. No, sir.

Q. When was it? A. Today.

Q. At any time before today? A. No, sir, this week.

Q. Any time since October of 1942? A. Since October 1942?

Q. I will withdraw that. When were you sentenced? A. I was sentenced in March of 1942.

Q. So that in October 1942 you were in Sing Sing Prison? A. No, sir, I was in Attica 2084
Prison.

Q. Pardon me, I should say Attica Prison. That is where you are serving your sentence? A. Yes.

Q. But at any time since February 15, 1941, were you ever questioned by any detectives in connection with the Fox murder case? A. No, sir.

Q. Now you say you know Joseph Indovino? A. Yes, sir.

Q. When did you first meet him? A. Sometime in 1940.

Q. What month? A. About August; in the 2085
summer.

Q. What year? A. 1940.

Q. 1940? A. 1940.

Q. And where was it that you first met him? A. I met him in a bar and grill.

Q. Where is the bar and grill? A. On Houston and Allen.

Q. In Manhattan? A. Yes, sir.

Q. Who introduced you to him? A. A fellow by the name of Foxy.

Q. Fox? A. Foxy.

Q. How do you spell it? A. F-o-x-y.

Q. That is his nickname? A. Yes.

Q. You don't know his right name? A. No, sir.

Q. The only name you knew him by was Foxy? A. Yes, sir, that is right.

Q. And after August 1940, when was the first time you met him? A. The first time I met him was in February.

Q. Of what year? A. 1941.

2087 Q. And about what time of the month? A. About the 9th or 10th of the month. I believe it was the 10th.

Q. Do you know what day of the week it was? A. No, sir.

Q. What time of the day or night was it that you saw him on February 10, 1941? A. What time of the night?

Q. What time of the day or night? A. Well, it was about 8:30.

Q. In the evening? A. In the evening.

Q. And where? A. On Attorney and Broome, on the corner.

2088 Q. Out on the street; that is on the sidewalk? A. That is right.

Q. You did not have any particular appointment with him at that time, did you? A. No, sir.

Q. Just happened to pass by and saw him there? A. I used to be there. I used to be there.

Q. You mean that was a place where you used to meet some of your friends? A. I used to be there with Beitler.

Q. You knew Beitler quite well, did you? A. Yes, sir.

Q. Now at that time you say that there was a conversation between you and Beitler and Indovino? A. Yes, sir.

Q. Will you give us in detail just what the conversation was? Repeat it. A. What the conversation was?

Q. Yes. Indovino said he had a piece of work in Coney Island, a payroll for $2,500.

Q. $2,500? A. Yes, sir. 2090

Q. Yes? A. And Beitler—he wanted Beitler and me to go along, and I spoke it over with Beitler and I refused it because he said there was a cop that goes along with it, and I wouldn't have anything to do with a cop that is in anything.

Q. If there was anybody other than a cop, you might have gone along on it? A. Possibly.

Q. You had gone out on other jobs with Beitler prior to that time? A. Yes, sir.

Q. Other robberies? A. Yes, sir.

Q. How many of them? A. I don't know. 2091

Q. A great number? A. A few.

Q. More than three or four? A. About three.

Q. Could it be five or even six? A. No, about three.

Q. And that was with Beitler? A. Yes, sir.

Q. Indovino was never with you, was he? A. No, sir.

Q. And you carried a gun, did you? A. Once in a while.

Q. You never went without a gun when you went out on robberies? A. Oh, I went on robberies plenty of times without a gun.

Q. But whoever was with you had a gun? A. We went plenty of times without a gun.

Q. No one on the stickup parties had a gun? A. At times we had guns, and at times just put our hands in our pockets.

Q. That was not very often, Kovner? A. Well, as much as with a gun.

Q. Just about fifty-fifty, is that it? A. Possibly.

Q. In the case in which you were sentenced
2093 here by Judge Leibowitz, you had a gun, though, didn't you? A. No, sir. You mean I had a gun?

Q. Yes. A. I didn't have a gun.

Q. There was a gun used? A. There was guns used.

Q. You were under the protection of that gun while you committed the robbery? A. Yes, sir.

Q. You were sentenced, armed, weren't you? A. I was sentenced on robbery first degree. I don't know what it means armed.

Q. Robbery first degree, armed. A. Robbery
2094 first degree, that is all I know, robbery in the first degree. I don't know anything else.

By the Court:

Q. Did you stickup a bookmaker here on Snyder Avenue? Wasn't that it? A. Church Avenue and East 31st Street.

Q. A bookmaker? A. Yes.

The Court: Proceed.

By Mr. Geoghan:

Q. Did Beitler or Indovino on the occasion of

your conversation with them on February 10th, ask you to bring somebody else in? A. Asked me?

Q. That would be willing to come along? A. Did they ask me?

Q. Yes. A. Beitler asked me to go with them.

Q. And you refused, didn't you? A. Yes, sir.

Q. Did they ask you to get somebody else? A. No, Beitler said he will get somebody else.

Q. Now did you see Indovino at any time between February 10th and February 15th? A. 2096 No, sir.

Q. Did you hear from him in any way? A. No, sir.

Q. Did you see Beitler between the 10th of February and the 15th of February? A. Yes, sir.

Q. Where did you see him? A. Well, I seen him every day, from the 10th until the 15th, until he left me.

Q. Beitler then was a regular pal of yours? A. Yes, sir.

Q. From the month of August 1940, when 2097 you say you first met Indovino, as I understand it, you never saw him until February 10, 1941? Am I correct in that? A. Well, I saw him once or twice pass by but I never spoke to him. I saw him a few times.

Q. Down in that same neighborhood of Attorney and Broome? A. No, around Houston and Allen on First Avenue. I never spoke to him at that time. I mean, I passed him and said, "Hello", and kept walking.

Q. No conversation? A. No.

Q. And do you recall what time of the day or

2098 night you saw him on those occasions? A. No, sir.

Q. You don't know whether it was the daytime or the nighttime? A. Well, if I saw anybody it was the nighttime; it was not the daytime.

Q. Never in the daytime? A. Very seldom I was around in the daytime.

Q. Now the second time, as I understand it, you saw Indovino and Beitler on February 21st or February 22nd, I understand that was your
2099 testimony? A. About a week after the 15th.

Q. Had you heard of the shooting in the meantime? A. Yes, sir.

Q. You knew there was the death of a patrolman by the name of Fox? A. Yes, sir.

Q. In connection with the Coney Island robbery? A. Yes, sir.

Q. And you knew exactly what that was all about before it happened, didn't you? A. No, sir.

Q. Beitler and Indovino rather had told you about it on February 10th, as you stated? A. Yes.

2100 Q. So you knew about it? A. Knew about what?

Q. You knew they were planning a robbery down in Coney Island? A. That is right.

Q. How did you first hear about the robbery? A. I heard about the robbery or the shooting?

Q. Of the shooting. A. I heard about it from Beitler.

Q. Pardon me? A. I heard about it from Beitler.

Q. When did he tell you? A. Told me the same night.

Q. The same night? A. Call it the morning. I call it the night but it is really morning.

Q. That is, that night? A. Three o'clock in the morning.

Q. The early hours of Sunday morning? A. Yes, sir.

Q. You met him at that time? A. He met me.

Q. Where? A. In the Embassy Club in Flatbush.

Q. The Citadel Club? A. The Embassy Club on Flatbush Avenue. 2102

Q. And it was at that time that he told you that he participated in it? A. Yes, he told me he shot a cop.

Q. So that within a few hours after it happened, you knew all about the murder of Patrolman Fox? A. Well, I knew that he shot a cop.

Q. What? A. I knew he shot a cop.

Q. He told you? A. That is right.

Q. Now on February 22nd or February 21st, you say you met Beitler and Indovino again at Attorney and Broome Street? A. I didn't meet Beitler and Indovino. I was with Beitler at all times. Anybody that met me met me with Beitler. 2103

Q. You were always together? A. I was with Beitler at that time, yes, sir.

Q. And what about Indovino? A. He came down and met Beitler there, and I was there.

Q. And what time was that? A. That was about nine o'clock.

Q. In the evening? A. Yes, sir.

Q. Was there anybody with Indovino at the time he came to the place where you and Beitler were? A. Nobody.

Q. What? A. Nobody.

2104

Q. Now did you have any conversation with Indovino at that time? A. Did I have any? No, sir.

Q. Yes? A. No, sir.

Q. Did Indovino and Beitler have a conversation? A. Yes, sir.

Q. In your presence? A. Yes, sir.

Q. And you say at that time they discussed this robbery? A. They discussed money.

Q. Discussed money? A. Talking only about

2105 money.

Q. Who was talking about money? A. Indovino.

Q. Any specific amount asked for? A. No, sir, he just says he needed money.

Q. And Beitler refused? A. Yes, sir.

Q. Did not give him any money? A. No, sir.

Q. You say that he told Ebbie that he needed money? A. Yes, sir.

Q. Now the third time you met him, as I understand it, was about two days after the second meeting, is that correct? A. Yes, sir.

2106 Q. Where did you see him at that time? A. Houston and Allen.

Q. That would be about February 24th; the 23rd or 24th? A. About that time.

Q. What time of the day or night was that? A. Nine o'clock.

Q. And again there was some discussion about money? A. Well, there was discussion about money and also discussion about the shooting.

Q. Between Indovino and Beitler? A. Yes, sir.

Q. You heard it all? A. In my presence.

Q. Indovino did not seem to be reluctant at all

to discuss this murder case in your presence, did he? A. Well, no one—I mean, I was always with Beitler.

Q. You were no great friend of Indovino's, were you? A. Well, casual.

Q. Not a confidential friend? A. No, I was Beitler's confidential friend.

Q. But he freely discussed this murder and robbery in your presence with Beitler? A. I knew all about it.

Q. I didn't ask you that. Will you answer that 2108
question? A. What?

Q. I say, did he freely discuss all about the murder case in your presence? A. That is right.

Q. Now the fourth time you met him, I understood you told the District Attorney, was about February 27th or 28th? Am I correct in that? A. That is right.

Q. Where did you see him, Indovino, on that occasion? A. At Attorney and Broome.

Q. The same place? A. Attorney and Broome.

Q. That is the same corner where you had met him before? A. This is the corner where I was. 2109

Q. Was Beitler with you again? A. Yes, Beitler had to be with me.

Q. Were you and Beitler together all day and all night? A. Well—

Q. Every day? A. We separated for a few hours and he would go away for something or other.

Q. But if he was in the City, he would be with you all the time? A. He would be with me if he was in the City.

Q. Didn't you work? A. Not at that time.

Q How long were you out of work during 1941?

2110 A. Well, I was out of work practically the whole year in 1941.

Q. Did no work at all? A. No.

Q. Except stickups, is that it? That was your job, sticking up people?

By the Court:

Q. You were a crook, weren't you? A. Yes.

Q. You were just a plain ordinary dyed-in-
2111 the-wool thief and crook, is that it? A. Yes.

Q. Just living by thieving and holdup, isn't that it? A. Yes, sir.

The Court: Anything more, Mr. Geoghan?

Mr. Geoghan: That is plenty.

By the Court:

Q. Beitler was your pal? A. Yes, sir.

Q. He was also a stickup man and a crook? A. Yes, sir.

2112 Q. Isn't that it? A. Yes, sir.

The Court: Proceed.

By Mr. Geoghan:

Q. And you also knew that Beitler was about as big a crook as you were, isn't that right? A. Yes, sir.

Q. Were you his bodyguard? A. No, sir.

Q. Didn't you go around protecting him at different times? A. No, sir.

Q. You did not? A. No, sir.

Q. Now on February 27 or 28th, what was your conversation then or what conversation did you overhear between Indovino and Beitler about the Fox case? A. Well, Tiger told Beitler he heard he made a score.

Q. Who said that? A. Tiger told Beitler he heard he made a score.

Q. Meaning what? A. A score is making money. He made money. He stuck somebody up and made some money. It is slang.

Q. In other words, they were successful in 2114
the robbery that they set out to do? A. No, this was something else. This was another robbery.

Q. Another robbery that Beitler was in? A. Yes.

Q. Not Indovino? A. No, just Beitler.

Q. So that that conversation was not about the Fox case? A. No, sir.

Q. Was there anything said about the Fox case in your presence that night between Indovino and Beitler? A. That night on Attorney and Broome? No, sir. 2115

Q. Nothing at all? A. No, sir.

Q. Now who was the first person that you ever spoke to about what you knew in connection with the Fox murder case? A. I did not speak to no one. The first person, you mean?

Q. Yes. A. I spoke to Mr. McGough.

Q. He is the first one? A. Yes.

Q. Did anyone at all tell you about it up in prison? A Someone might have.

Q. Someone might have? A. Might have mentioned it or mentioned something pertaining to it, or, "Did you hear Fox got killed," or some-

thing like that. I don't know if anybody spoke and sat down with me like a brother and told me what happened and I told him. Someone could have said, "Fox got killed"—or "Do you know who killed Fox". They might have said it.

Q. By the way, when you were brought up to prison from Brooklyn, were you brought to Sing Sing first? A. Yes, sir.

Q. How long were you in Sing Sing? A. Two
2117 and a half months.

Q. And from there, you were transferred to Attica? A. Yes, sir.

Q. While you were in Sing Sing Prison, do you recall any person, any of the convicts there telling you about the Fox murder case? A. I don't remember.

Q. You don't remember? A. No.

Q. Do you know anybody up there—I withdraw that. Do you know anybody in Sing Sing Prison by the name of Kurt Lawrence? A. Kurt who?

Q. Kurt Lawrence. A. Kurt Lorensen.
2118

Q. Do you know him? A. I met him. I was in Raymond Street with him.

Q. He was a friend of yours before you went up? A. He was no friend of mine. He was in Raymond Street with me. He is only a kid.

By the Court:

Q. He is only what? A. A young kid.

By Mr. Geoghan:

Q. How do you spell his name? Do you know? A. Lorensen. It is a long name.

Q. You first met him in Raymond Street Jail and also saw him up in Sing Sing? A. Yes, sir.

Q. From the time that you heard about this case, and knew about the Fox murder case, did you ever speak to any official, any police officer or any representative of the District Attorney's office in Kings County, until you were brought down here a day or two ago? A. No, sir.

Q. What? A. No, sir.

Q. Never did? A. No, sir. 2120

Q. When were you brought down from Attica? A. I came in Monday night, 12 midnight.

Q. And where did you go? Where were you brought? A. I was brought to the Tombs Prison in New York.

Q. On Tuesday, were you brought here to Brooklyn? A. I was brought to the District Attorney's office.

Q. Where were you taken in Brooklyn? A. Yes; to the District Attorney's office.

Q. Here in the Municipal Building? A. I guess it is the Municipal Building. 2121

Q. That was the first place you were brought? A. Yes, sir.

Q. Were you brought to the Bossert Hotel at any time on Tuesday? A. No.

Q. Now on Tuesday, when you were at the District Attorney's office, whom did you speak to? A. The first one?

Q. Yes. A. My father.

Q. Who? A. My father.

Q. I mean, what representative of the District Attorney's office? A. Mr. McGough.

2122 Q. That is Mr. McGough who is conducting this trial? A. Yes, sir.

Q. And he asked about what you knew in connection with the Fox case? A. Yes.

Q. And that is the first time you ever mentioned it to any public official? A. What I knew? Yes, sir.

Q. What? A. Yes, sir.

Q. The first time? A. Yes.

Q. Or to any member of the Police Force?
2123 You never mentioned it to them, did you? A. No, sir.

Q. Any promises of any kind made to you? A. No, sir.

Q. Any promises of help for any help you might give the People of the State of New York in connection with this case? A. No, sir.

Q. In connection with your testimony in the case? A. No, sir.

Q. You do not expect any, do you? A. No, sir.

Q. You would not lie about this case merely to help somebody or to help the People in its
2124 case? A. No, sir.

Q. You would not commit perjury? A. Why should I?

Q. Do you know what perjury is? A. Sure, I know.

Q. Would you commit perjury to help yourself? A. No, sir.

Q. You consider that is too low a crime to commit? A. That is right.

Q. Even though it would mean helping you to lessen the term of years— A. I don't have to—

Q. Wait a minute—that is now hanging over

2125

your head in prison. You would not do it even for that? A. No, sir.

Q. You would commit robberies with a gun but not perjury, is that right? A. That is right.

By the Court:

Q. What do you mean, you don't have to? A. If you let me explain, I will.

Q. You may explain. A. I do not have to because if I did not stop Beitler, he would have killed certain people. Beitler wanted to kill certain people and I stopped him; the people over there.

2126

By Mr. Geoghan:

Q. You had to stop him? A. He came to me—

Mr. McGough: Wait a minute. If the door is opened, I will march right in.

The Court: Do you want to pursue this further?

Mr. Geoghan: No; he is volunteering something.

2127

The Court: Proceed.

By Mr. Geoghan:

Q. I want a specific answer to my question. You consider perjury so low that you would not commit it even if it would help yourself? A. Yes, sir.

Q. You would commit robberies with a gun and stick up people? A. I will rob people like

2128 bookmakers and Shylocks and all illegitimate people.

Mr. Geoghan: Judge, I would like an answer "Yes" or "No".

Mr. McGough: It has already been asked and answered before.

Mr. Geoghan: It has not. Please wait until I finish.

The Witness: Yes.

2129 By Mr. McGough:

Q. You would commit a crime and have committed the crime of robbery with a gun, but you would stop at the crime of perjury even though it would help yourself? A. Not in this case.

Q. Please wait until I finish.

The Court: Let him finish.

The Witness: Yes.

The Court: Wait until Mr. Geoghan has finished his question before you answer. Just wait until the lawyer has completed his question and then you will have an opportunity to answer. Proceed, Mr. Geoghan.

2130 Mr. Geoghan: May I have the stenographer repeat the question.

The Court: Yes, repeat the question.

(The question was repeated by the stenographer as follows:

"Q. You would commit a crime and have committed the crime of robbery with a gun, but

you would stop at the crime of perjury even though it would help yourself?")

By Mr. Geoghan:

Q. Yes or No? A. I don't understand the question. Read it again. There is too many words there.

The Court: Read it again.

The Witness: You get me all mixed up. 2132

(The last question was repeated by the stenographer.)

By Mr. Geoghan:

Q. Yes or No? A. I don't understand the question.

Q. Let me put it in this way. A. Speak in plain English.

Q. You have committed the crime of robbery, haven't you? A. Yes, sir.

Q. You stand convicted of that? A. Yes, sir. 2133

Q. But you would not commit the crime of perjury, that is to say, you would not lie on that stand under oath, even though by that lie you would help yourself in the predicament in which you are in now? A. Yes.

Mr. Geoghan: That is all.

*Redirect examination by Mr. McGough*:

Q. Did you say that you will commit the crime of robbery or that you would commit it—

in other words— A. I have committed the crime—

The Court: I think Mr. Solovei should have the opportunity to cross-examine the witness before any other examination by you.

Mr. McGough: All right.

The Court: I just want to ask a question in line with what Mr. Geoghan asked you. I want to be clear on what you claim. The credibility is of course for the jury.

2135

Mr. Solovei: I first move to strike out all this man's testimony.

The Court: Wait; you are interrupting the Court.

Mr. Solovei: I am sorry. I thought you were through, sir.

By the Court:

Q. You are testifying here against two men? A. Yes, sir.

2136

Q. That is, Malinsky and Indovino? A. That is right.

Q. These men are on trial for their lives? You understand that? A. Yes, sir.

Q. Now do you understand the full import of your testimony, the importance of your testimony here? A. Yes, sir.

Q. You understand that, don't you? A. Yes, sir, I do.

Q. First I want to know if you ever had any trouble with Malinsky? A. No, sir. No, Judge.

Q. Did you ever have any trouble with Indovino? A. No, Judge.

Q. Have you ever had any disputes with them? A. No.

Q. Now I take it what Mr. Geoghan asked and meant, and I want to be crystal clear on it, is would you commit perjury; would you lie— A. No, Judge.

Q. —knowing that your lies may send a man away, may convict a man? A. No.

Q. If you knew it could help you? A. No, I 2138
would not.

Q. How long have you known, would you say, Malinsky? A. Oh, about eight years.

The Court: All right, go ahead. I take it that is what you had in mind, Mr. Geoghan.

Mr. Geoghan: Yes, Judge.

Mr. Solovei: I move to strike out all this man's testimony, if your Honor pleases, upon the ground that it is incompetent and immaterial and irrelevant 2139
and not binding upon the defendant Malinsky.

The Court: He has said nothing about Malinsky, has he?

Mr. McGough: My recollection is that he said that the first time, which was about the 10th of February, Beitler and he were together when Malinsky came over at Broome and Attorney Street and Tiger did the talking.

The Court: In the presence of Malinsky?

2140

Mr. McGough: That is correct.

The Court: Is that correct, Mr. Solovei?

Mr. Solovei: I think that is correct.

The Court: I deny your motion as to that feature of the testimony.

Mr. Solovei: I except.

The Court: But as to his conversation with Indovino, not in the presence of Malinsky, in which Malinsky did not partici-

2141

pate, I sustain your objection, and I have already instructed the jury that that evidence is received only as against Indovino.

Mr. Solovei: In view of this man's testimony, if your Honor pleases, I now move for the withdrawal of a juror and the declaration of a mistrial.

The Court: Motion denied.

Mr. Solovei: Exception.

*Cross-examination by Mr. Solovei:*

2142

Q. Kovner, in October 1941, did you live at the Hotel Abbey in New York? A. Yes, sir.

Q. Did Beitler live at the Hotel Abbey in New York? A. Yes, sir.

Q. Did you occupy the same rooms together? A. The same one room.

Q. What? A. One room.

Q. On October 28, 1941, while you lived at the Hotel Abbey, do you remember police officers coming to that hotel? A. Yes, sir.

Q. Do you remember them coming to the room where you lived? A. Yes, they came.

Q. Did you live on the 21st floor? A. No.

Q. The 24th floor? A. No, sir.

Q. What floor did you live on? A. The 9th floor.

Q. The 9th floor? A. Yes, sir.

Q. Is that the same floor that Beitler lived on with you? A. Yes, sir.

Q. Now do you remember the first one to enter the building was Beitler?

The Court: Now—

The Witness: You ask me what happened, and I will tell you what happened. 2144
If you ask me what happened, I will tell you what happened.

The Court: Go ahead.

By Mr. Solovei:

Q. That was the time when you and Beitler and a man by the name of Sam Kolinsky were there, is that right? A. Yes.

Q. Is it Kolinsky? A. Koblonsky.

Q. And that was the time when Beitler and the police shot it out, is that right? A. Well, something to that effect. 2145

Q. Yes? A. And Beitler committed suicide.

Q. The police tried to get in there to lock up Beitler, you and Koblonsky, and there was a lot of shooting going on? A. No such thing. Ask me what happened and I will tell you.

The Court: Wait until Mr. Solovei puts the question.

Q. There was some shooting there—

2146

The Court: Wait a minute, please. I know you do not do it intentionally, Mr. Solovei. It is all done unintentionally, but please do not shout at him.

Mr. Solovei: All right, Judge.

The Court: It is not done with any intention at all but it tends to disrupt the proceedings somehow.

Mr. Solovei: All right, Judge.

The Court: Mr. Geoghan examined him
2147 in a quiet fashion and there was no trouble. I think you will have just as much ease with him if you speak quietly to him. There is no necessity to get excited.

By Mr. Solovei:

Q. That was the night that Beitler shot it out with some cops at the hotel, is that right? A. He shot a man that night and he committed suicide.

2148 Q. He shot at the cops, too, didn't he? A. He fired at a cop, too.

Q. Now can you give this Court and jury a minute detail, if you can, how that crime was committed in Coney Island on February 15, 1941?

Mr. McGough: I object.

The Court: Objection sustained.

Mr. Solovei: I except.

The Court: Proceed.

By Mr. Solovei:

Q. You and Koblonsky were held on this charge? A. No.

Q. The Fox murder? A. Koblonsky was in prison at the time this happened.

Q. Koblonsky was? A. Yes.

Q. When was he arrested? A. He came out in July 1941. He was arrested in 1938. He went back for violation in November 1941. He was only out three months, July to November. 2150

Q. Were you picked up with somebody in reference to this case? A. No, sir.

Q. At no time questioned about the Fox murder case yourself? A. No, sir.

Q. Are you friendly to Spielfogel, Slip? A. I met him in Sing Sing.

Q. Prior to that, were you very friendly with him? A. I never knew him outside. I never knew him before I see him in Sing Sing.

Q. Did you ever see him around the East Side? A. No.

Q. How about Yellin? Did you ever know him? A. Didn't know him until I see him in Sing Sing. 2151

Q. And this man Kurt Lawrence, did you know him before you met him in jail? A. He ain't a friend of mine. He is only a young kid. He was only in Raymond Street with me.

Q. The name is Kurt Lorensen, is that right? A. Yes. He was on the same gallery with me in Raymond Street. I only spoke to him once or twice in Sing Sing.

Q. And of course while at Sing Sing, you

never had anything to do with Yellin or Slip, did you? A. I ate with Slip.

Q. You never had anything to do with him other than eating with him? A. That is right.

Q. And you never discussed your affairs with him? A. I did not discuss mine, no.

Q. And he never discussed his? A. He might have said something about a few affairs that I don't remember what.

Q. Now you said something about Malinsky
2153 that you met him sometime in March in 1941, is that correct? A. That is right.

Q. And he said something about being on the lam, using your language, is that right? A. That is right.

Q. Didn't you know that Malinsky worked for a trucking concern in New York City? A. No, I did not.

Q. Did you see Malinsky in the City of New York often after March? A. Yes, I saw him 'way until June.

Q. And he was walking around the streets of
2154 the City of New York? A. Whenever I saw him he was walking.

Mr. Solovei: I think that is all.

The Court: Are there any other questions by counsel for Rudish?

Mr. Carabba: May I ask your Honor to instruct the jury that whatever testimony this witness gave is not binding on the defendant Rudish?

The Court: There is nothing that this witness has testified to that in anywise implicates Rudish. That is clear, isn't

it. There can be no question about that. He has not mentioned Rudish's name at all. Is that instruction satisfactory?

Mr. Carabba: Yes, sir.

Mr. McGough: That is all. Step down. The People now rest, and I would like the Court's permission, if I may get it, to call Miss Esther Levine, of 321 Chester Street, Brooklyn, New York, just as soon as we can bring her to Court.

The Court: Is that the sister of this 2156
man Levine?

Mr. McGough: Yes. The young lady is at business, and the police say that she will not be home until perhaps six o'clock. I think I can guarantee that she will be here in the morning. I have spoken to her already, that is my office has, and I would like to rest at this time with the provision that I might reopen the People's case solely to put her on and then rest again.

The Court: You just want to account 2157
for the fact that you did not bring Levine here?

Mr. McGough: That is right.

The Court: And where Levine is? Is that it?

Mr. McGough: That is all.

The Court: At the present time?

Mr. McGough: That is the only reason.

The Court: Do counsel object to the District Attorney's proposal?

Mr. Carabba: No.

Mr. Geoghan: No. I understand he just wants to call one other witness.

*Motion to Dismiss Indictment Against Defendant Malinsky*

The Court: He wants to call the sister to account for the absence of a man by the name of Levine.

Mr. Geoghan: I certainly have no objection to that.

The Court: Any objection, Mr. Solovei?

Mr. Solovei: No objection.

The Court: And you rest your case with that exception?

Mr. McGough: The People now rest with that exception.

The Court: I will hear the motions at this time.

Mr. Carabba: May I make the motions tomorrow morning?

The Court: Make your motions now.

Mr. Carabba: I do not think the motions should be made in the presence of the jury, your Honor.

The Court: It does not make any difference. Do you want the jury excluded?

Mr. Carabba: The only thing is this, that I would like to have an opportunity to review the testimony that is being furnished to us daily, and then make my motions.

The Court: Make your motions now.

Mr. Solovei: I move to dismiss the indictment and for the discharge of the defendant Malinsky as a matter of law, upon the ground that the People have failed to make out a case against the defendant Malinsky beyond a reasonable doubt in accordance with the statute made and provided for in such cases.

*Motion to Dismiss Indictment Against Defendant Indovino*

2161

The Court: Motion denied.

Mr. Solovei: Exception.

Mr. Geoghan: I understand there was some reservation made by your Honor that you would accept certain testimony subject to its being connected up. I think that happened in the very beginning. I do not recall just what it was.

The Court: Yes; that is the testimony of Yellin.

2162

Mr. Morritt: That was the testimony of these so-called persons who preceded Yellin. These were people that were at the scene at that time.

The Court: You mean the people who testified about the shooting out in Coney Island?

Mr. Morritt: All the testimony.

The Court: That will stand. That all will stand. That merely describes the crime. It does not connect any of the defendants with the commission of the crime. That testimony will certainly stand.

2163

Mr. Geoghan: I move to dismiss the indictment as to Indovino and discharge the defendant, on the ground that the only testimony here to connect him with the commission of this alleged crime is the testimony of Yellin, who by his testimony in this case, is an accomplice, and whose testimony must therefore be corroborated in order to connect Indovino with the commission of the crime, and the only other testimony is the testimony of this convict, who has just left the witness-stand, and

2164 *Motion to Dismiss Indictment Against Defendant Rudish*

that his testimony is not believable, as a matter of law; so as a matter of law I move and say that there is enough reasonable doubt in your Honor's mind to dismiss at this time the indictment against Indovino.

The Court: Your motion is denied, Mr. Geoghan.

Mr. Geoghan: And I move to dismiss it on all the other grounds set forth in the

2165 Code of Criminal Procedure.

The Court: Motion is denied.

Mr. Geoghan: Exception.

Mr. Carabba: I respectfully move, if your Honor pleases, on behalf of the defendant Rudish, to dismiss the indictment as a matter of law on the grounds that the prosecution has failed to prove the case stated by them in their opening; and has failed to prove the allegations contained in the indictment.

The Court: Your motion is denied.

166 Mr. Carabba: I respectfully except.

Mr. Meadow: I would like to make a motion on behalf of the defendant Rudish on a further ground.

The Court: Only one counsel will make motions. Call it to the attention of Mr. Carabba.

Mr. Meadow: I am willing to give it.

The Court: All right, I will hear you, too.

Mr. Meadow: There was only the testimony of Yellin and Spielfogel as to the defendant Rudish. There was no other testimony whatsoever.

2167

The Court: The only testimony you are speaking now of is the prima facie case?

Mr. Meadow: Yes.

The Court: The only testimony in this case that concerns Rudish is the testimony of Yellin and Spielfogel.

Mr. Meadow: Now, if your Honor pleases, Spielfogel—I am sorry.

The Court: That is all that I recall, and some testimony by a police officer, who 2168
spoke to Rudish in the Hotel Bossert, where Rudish is alleged to have said, "Yellin can prove that I am innocent". Is that correct?

Mr. Meadow: Yes.

The Court: Is there anything else in the record?

Mr. McGough: I think your Honor is right. I think that is substantially correct; Yellin and Spielfogel, and that testimony with reference—to that of Lieutenant McNally at the Bossert Hotel.

Mr. Meadow: Spielfogel said that he 2169
was not called before the Grand Jury—

The Court: Let us not go into the details.

Mr. Meadow: I am talking about the law. I am discussing the law, your Honor. Section 399, and People against Nitzberg—if your Honor wishes, I will discuss it at the Bench.

The Court: What is your point about People against Nitzberg? How is that material? Come up here.

(Mr. Carabba and Mr. Meadow confer with the Court at the Bench.)

The Court: I will deny your motion for the present.

Mr. Meadow: Exception.

Mr. Solovei: Just one more application on behalf of the defendant Malinsky. Under Section 1041 of the Code of Criminal Procedure, I further move to dismiss the indictment as charged on the ground as a matter of law that the People have totally failed to prove by independent proof that the person mentioned and described in the indictment as the person that shot and killed Leon Fox was the man who is mentioned therein as Abraham Beitler. The section your Honor is undoubtedly familiar with.

The Court: There are a lot of sections that I do not now a thing about. I am one Judge that does not say I am familiar with everything. Let me see it.

Mr. Solovei: Section 1041, I am referring to.

The Court: That is the *corpus delicti* section?

Mr. Solovei: Yes, that is right.

The Court (reading): "No person can be convicted of murder or manslaughter unless the death of the person alleged to have been killed and the fact of the killing by the defendant, as alleged, are each established as independent facts; the former by direct proof, and the latter beyond a reasonable doubt." Motion denied.

Mr. Solovei: Exception.

The Court: Gentlemen of the jury; I

denied the motions of each of the lawyers to dismiss the indictment as against their respective clients. What I am about to say now I shall repeat in my charge when the case is submitted to you but I think it is appropriate at this time because it is immediately after the ruling, to call your attention to the fact that I have not decided the guilt or innocence of these defendants by denying counsel's motion. I have not ruled that they are innocent and 2174
I have not ruled that they are guilty; that you are going to decide. I have merely ruled that there is enough in the case thus far to make out what is known in law as a *prima facie* case as against each defendant; therefore I denied counsel's motions. These rulings upon matters of law shall have no part in the determination of the jury as to the guilt or innocence of these defendants or either of them or any of them. It is no indication on the part of the Court that the Court believes them 2175
guilty or that the Court believes them innocent. The Court has no belief in that matter, and with which the jury can have no concern. Now I think I have covered everything.

Mr. Meadow: Except as to my motion.

The Court: I have denied your motion at the present time with an exception to the defendant Rudish. Is there anything else you care to have me say to this jury to make it clear? I think I have made it clear. I want to be absolutely more than fair to each of these defendants.

Mr. Carabba: I feel that my motion to dismiss was incomplete and if I had an opportunity to make it tomorrow—

The Court: If I deem it important to hear you any further, I will do so in the morning. At the present time your motion is denied.

Mr. Carabba: Would your Honor consider in the morning giving me an opportunity to amend the motion that I have
2177 made here. I wanted an opportunity to read the evidence.

The Court: You shall have the opportunity if it becomes necessary.

Mr. Carabba: Thank you.

The Court: Gentlemen of the jury, we are about to take a recess until tomorrow morning at 9:30. I admonish you again not to discuss the case among yourselves or with any other person or permit any person to speak to you about this case or discuss it in your presence. You must
2178 keep your minds open. Do not form or express any opinion or conclusion as to the guilt or innocence of these defendants, or either of them or any of them until the case has been finally submitted to you by the Court after a charge on the law. Refrain from reading anything in the public press about this case. You may retire and return here tomorrow morning at 9:30 o'clock.

(The jury retires from the courtroom.)

The Court: The defendants are remanded.

(Recess until 9:30 a. m., June 19, 1943.)

(CONTINUED IN VOLUME II)